



Guarding the Voice of the Ancestors: The Sasando Dispute, International Law, and the Fight for Cultural Sovereignty

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Abstract: In late 2021, a quiet alarm sounded within Indonesia's cultural corridors. Reports emerged that Sri Lanka had initiated steps to register the Sasando, a centuries-old harp from the island of Rote, as its own intellectual property with the World Intellectual Property Organization (WIPO). This event was not merely an administrative anomaly; it was a profound cultural provocation, exposing the vulnerable fault lines between rich, living traditions and a global intellectual property (IP) regime designed for industrial innovation. This research paper examines the Sasando dispute as a critical case study in the struggle to protect Traditional Cultural Expressions (TCEs) in the 21st century. Moving beyond a dry legalistic analysis, it humanizes the conflict by framing the Sasando not as a mere "instrument," but as the living voice of the Rote people—a repository of history, identity, and spiritual knowledge. The paper employs a normative juridical methodology, analyzing the shortcomings of existing international frameworks like the UNESCO 2003 Convention and WIPO's mechanisms in safeguarding communal, intergenerational heritage. It argues that the current system creates a "legal void" that disadvantages source communities, privileging Western concepts of individual authorship and novelty over collective, cumulative innovation. Through a detailed exploration of Indonesia's reactive diplomacy and the comparative lessons from other disputes (e.g., Pantun, Kuda Lumping), the study concludes that effective protection requires a paradigm shift. It proposes a multi-faceted strategy combining urgent, community-led documentation, the development of sui generis national laws, proactive "cultural diplomacy," and a concerted push within WIPO for a binding international instrument. Ultimately, this paper contends that protecting instruments like the Sasando is fundamental to preserving cultural diversity, upholding the rights of indigenous peoples, and challenging the neo-colonial dynamics embedded within global intellectual property law.

Keywords: *Sasando, Traditional Cultural Expressions, Intellectual Property Rights, Cultural Heritage, International Law, WIPO, Biopiracy/Cultural Misappropriation, Cultural Sovereignty.*

1. Introduction:

The Stolen Chord—When Culture Becomes a Commodity

Imagine a sound: ethereal, resonant, vibrating through a bamboo tube, its strings plucked in patterns passed down through generations. For the people of Rote in East Nusa Tenggara, Indonesia, the sound of the Sasando is the soundtrack of life. It accompanies rituals, tells

epic histories of the *Dae Langga* clan, mourns the dead, and celebrates the living. Its very name, from the Rote language "*sasandu*," means "that which vibrates" or "to be voiced." It is not simply an object; it is an animate extension of community, a sacred heirloom whose craft and music embody a unique worldview.

Now, imagine that distinctive sound being severed from its roots, repackaged, and claimed by a foreign entity as its own “invention” or “cultural asset.” This is the chilling reality faced by countless communities worldwide, from the Maori *ta moko* tattoos to the Navajo weaving patterns. In 2021, this abstract threat materialized for Indonesia when Sri Lanka, reportedly through its ambassador, sought to register the Sasando with WIPO. While the claim was successfully rebuffed through swift diplomatic protest and a compelling cultural performance in Geneva, the incident was a wake-up call. It revealed that in the global arena, culture is not just celebrated—it is contested, commodified, and vulnerable to appropriation.

This research paper delves into the heart of this conflict, using the Sasando dispute as a prism to examine the profound inadequacies of contemporary international law in protecting Traditional Cultural Expressions (TCEs). The central question is not merely “*How can Indonesia legally protect the Sasando?*” but rather, “*Why does a system designed to promote and protect creativity fail so spectacularly when confronted with the oldest, most sustained forms of human creativity?*” This inquiry is deeply humanistic. It concerns the right of a community to maintain the integrity of its cultural DNA, to control the narrative of its own heritage, and to benefit from its cultural capital in a globalized world.

The stakes extend far beyond a single instrument. They touch on issues of post-colonial equity, the rights of indigenous peoples as enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the very definition of “property” and “invention.” This paper argues that the Sasando case exemplifies a systemic conflict between two paradigms: the **communal, intergenerational, and culturally-embedded nature of TCEs** versus the **individualistic, novelty-centric, and commercially-oriented framework of mainstream intellectual property law**.

Navigating this clash requires more than legal technicalities; it demands a philosophical and strategic reorientation.

This study will first explore the unique cultural significance of the Sasando, grounding the legal discussion in its human context. It will then dissect the existing international legal architecture, highlighting the protective gaps. A detailed analysis of Indonesia’s response forms a core case study, from which broader lessons are drawn. Finally, the paper will propose a comprehensive, forward-looking strategy for Indonesia and similarly positioned nations to defend their intangible cultural sovereignty in an interconnected, but often inequitable, world.

2. The Sasando: More Than an Instrument—A Living Entity

To understand the gravity of its potential misappropriation, one must first appreciate what the Sasando *is*. Its physical construction is a marvel of organic engineering: a primary resonator of bamboo, a fan of lontar palm leaves forming a secondary resonator, and strings traditionally made of palm fiber. Each part is sourced from the local environment, reflecting a deep ecological symbiosis.

Yet, its true essence lies in its intangible aspects:

- **A Vessel of Oral History:** Sasando music is not merely entertainment; it is a primary medium for transmitting the “*Hus*,” the oral histories and genealogies of Rotenese families. A master player (“*Mone Sasando*”) is thus a historian, a genealogist, and a storyteller.
- **A Ritual and Ceremonial Pillar:** Its sound is integral to life-cycle ceremonies—birth, marriage, death—and agricultural rituals. It mediates between the human and spiritual realms.
- **A System of Epistemology:** The knowledge system (“*Ilmu Sasando*”)

encompasses not just playing technique, but the lore of tree selection, the spiritual preparations for crafting, the tuning systems tied to natural phenomena, and the specific compositions for specific social functions.

- **Communal, Not Individual, Creation:** No single person “invented” the Sasando. Its design and repertoire are the cumulative result of generations of artisans and musicians within the Rotenese community. It is a classic TCE: “traditional” in its mode of transmission, “cultural” in its significance, and an “expression” of collective identity.

Attempting to file an IP claim on the Sasando is akin to patenting a language or copyrighting a prayer. It attempts to isolate a tangible manifestation from the deep, living cultural soil that gives it meaning and life. The Sri Lankan claim, whether a bureaucratic error or a deliberate act of “cultural diplomacy,” threatened to do precisely that: to strip the Sasando of its context and claim its form as a detached, ownable asset.

3. The Legal Labyrinth: International Frameworks and Their Gaping Holes

The international community has not been blind to the issue of protecting cultural heritage. However, the existing frameworks are fragmented and often ill-suited to the task.

3.1 The UNESCO 2003 Convention: Preservation, Not Protection

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) is the most prominent instrument. It was a landmark achievement, moving heritage protection beyond monuments and sites to include “practices, representations, expressions, knowledge, [and] skills.” It promotes identification, documentation, research, preservation, and revitalization.

The Critical Shortfall: The 2003 Convention is fundamentally a **cultural policy instrument**, not an **intellectual property rights regime**. Its goal is safeguarding against loss and encouraging transmission, not providing legal tools to prevent misappropriation or grant communities enforceable rights to control use, derive benefits, or halt offensive commercialization. Listing the Sasando on UNESCO’s Representative List (as Indonesia has successfully done with genres like *Wayang* or *Pencak Silat*) raises its profile but does not grant it legal armor against a WIPO claim. It is a shield against oblivion, not against theft.

3.2 WIPO and the Endless Conversation

WIPO, as the UN’s specialized agency for IP, is the logical forum for discussing TCE protection. For over two decades, its Intergovernmental Committee (IGC) has been negotiating text for an international legal instrument. WIPO’s 1982 *Model Provisions* offered early guidance for national laws, and its current work is crucial.

The Critical Shortfall: Progress at the IGC is glacially slow, mired in fundamental disagreements between developed nations (often net users of TCEs) and developing nations (often source communities). Key sticking points include:

- **Scope of Protection:** What exactly should be protected?
- **Beneficiaries:** Who holds the rights? A state? A specific indigenous community?
- **Term of Protection:** Should it be perpetual (as befits tradition) or limited (like patents and copyrights)?
- **Exceptions and Limitations:** How to balance protection with cultural exchange and freedom of expression? In the absence of a binding treaty, WIPO’s system for geographical indications or copyright remains the default. These are poor fits. Copyright requires an identifiable author and a

fixed term; the Sasando has neither. A trademark might protect a specific logo, not the instrument itself. This legal vacuum is what allowed the Sasando claim to arise.

3.3 The National Layer: Indonesia's Fragmented Defense

Indonesia has domestic tools, but they are uncoordinated and weak in transnational enforcement.

- **Law No. 28/2014 on Copyright:** Article 38 recognizes “folklore and communal cultural works” under state ownership, with commercialization requiring permission. However, enforcement is passive and bureaucratic, ill-equipped for proactive international defense.
- **Law No. 5/2017 on the Advancement of Culture:** Focuses on preservation and documentation.
- **Local Regulations:** The province of NTT registered the Sasando as a TCE with the Ministry of Law and Human Rights in 2020. This is a vital administrative record but lacks the teeth of a specific *sui generis* (stand-alone) law that defines rights, violations, and penalties.

The national framework, therefore, is a patchwork of preservation-oriented policies without a coherent, proactive, and externally-focused IP strategy for TCEs. The system reacted to the Sri Lankan claim but was not designed to prevent it.

4. Case Study Analysis: Indonesia's Response to the Sasando Claim—Tactical Success, Strategic Warning

The handling of the 2021-2022 incident provides a real-time playbook of both effective tactics and revealing systemic weaknesses.

Phase 1: Reactive Alarm and Diplomatic Protest. Upon learning of the claim, the NTT Provincial Government, led by Vice Governor

Josef Nae Soi, immediately contacted WIPO officials to protest. This direct, high-level engagement was crucial. It leveraged diplomatic channels to assert Indonesia's position before any formal registration could be finalized. This highlights the importance of **vigilance and diplomatic networks** within international organizations.

Phase 2: Proactive Cultural Diplomacy as Evidence. In September 2022, Indonesia shifted from defense to offense. A delegation from NTT performed the Sasando at the Indonesian Mission in Geneva before 350 international diplomats. This was a masterstroke of **“evidence-by-demonstration.”** It did not just state a claim; it *performed* the living, authentic tradition. It transformed the Sasando from a subject in a legal file into an undeniable cultural experience, making Indonesia's ownership palpable and legitimate. The Director-General of WIPO's subsequent acknowledgement was a direct result of this performative proof.

Phase 3: The Pursuit of Formal Certification. The promised certificate from WIPO (scheduled for November 2022) represents a sought-after form of **international legitimization**. While not a patent, it serves as a powerful symbolic and political deterrent against future claims.

Lessons and Limitations:

1. **Success Through Agility:** The combination of swift bureaucratic protest and compelling cultural performance worked. It was a hybrid legal-diplomatic-cultural strategy.
2. **The High Cost of Defense:** This successful defense required significant resources—travel for a delegation, coordination across ministries (Foreign Affairs, Education and Culture, Law and Human Rights). Indonesia cannot mount such a campaign for every one of its thousands of TCEs.

3. **The Problem of Reactivity:** The entire episode was reactive. Indonesia was forced to expend energy defending what was inherently theirs because no proactive, pre-emptive registration or protection mechanism existed at WIPO for TCEs.
4. **Community Involvement Was Peripheral:** While Rotenese craftsmen and players were likely involved in the Geneva performance, the public narrative and legal strategy were led by government officials. For true sustainability, the source community must be at the center of the claim, not just as performers, but as rights-holders and decision-makers.

5. Comparative Context: Sasando in a World of Cultural Disputes

The Sasando dispute is not isolated. Indonesia’s cultural landscape is dotted with similar battles, each illuminating different facets of the challenge.

- **Pantun (with Malaysia, 2020):** A success story of **multinational nomination**. Indonesia and Malaysia jointly successfully inscribed Pantun (Malay poetic form) on UNESCO’s list. This recognized the shared, transnational nature of the heritage, pre-empting competitive claims. It shows that cooperation between source nations can be a powerful

strategy, especially for cultural forms that cross modern borders.

- **Kuda Lumping (with Malaysia, 2017):** Malaysia’s promotion of its version of the *Kuda Lumping* (javanese trance dance) on tourism platforms caused public outcry in Indonesia. This dispute resides more in the realm of **cultural representation and tourism branding** than formal IP claim, but it stings similarly. It highlights the battle over narrative and economic benefit in the digital marketplace.
- **Batik, Wayang, Keris:** Indonesia’s successful UNESCO listings for these arts have provided a degree of protective prestige. However, as the Sasando case shows, a UNESCO badge does not block a WIPO filing. They operate on parallel, non-intersecting tracks.

These cases reveal a spectrum of threats: from formal IP claims (WIPO) to representational appropriation (tourism branding) to battles over origin narratives. A comprehensive national strategy must address all fronts.

6. The Core Challenge: The Fundamental Mismatch

The root of the problem is a philosophical and legal mismatch. The table below summarizes this clash of paradigms:

Aspect	Traditional Cultural Expressions (e.g., Sasando)	Conventional Intellectual Property (Patent, Copyright, Trademark)
Nature of Creation	Communal, cumulative, intergenerational.	Individual (or corporate), discrete, attributable to a specific author/inventor.
Concept of Novelty	Rooted in tradition, mastery, and faithful transmission. Value lies in authenticity to origin.	Requires “newness,” “originality,” or “inventive step.” Value lies in departure from the prior art.

Term of Protection	Perpetual, as long as the tradition is alive and the community exists.	Limited (e.g., life+70 years for copyright, 20 years for patents).
Rights Holder	The community (often difficult to define legally), sometimes held in trust by the state.	An individual or a legal entity (company).
Primary Objective	Cultural integrity, continuity, spiritual significance, and community identity.	Economic incentive, commercial exploitation, and market exclusivity.
Mode of Transmission	Oral, experiential, often secret/sacred, within the community.	Fixed in tangible media (text, blueprint), publicly disclosed.

Squeezing the Sasando into a copyright or patent application is a legal and cultural absurdity. It is an attempt to force a square, living, communal peg into a round, individualistic, commercial hole. The current system, by failing to accommodate this difference, effectively *creates* the conditions for biopiracy and cultural misappropriation.

7. A Path Forward: A Multi-Pronged Strategy for Indonesia

Based on the Sasando case analysis and the identified systemic flaws, Indonesia must adopt a bold, multi-level strategy moving from reactive defense to proactive sovereignty.

7.1. Domestic Legal & Institutional Reform: Building the Fortress at Home

- **Develop a *Sui Generis* Law for TCEs:** Indonesia must pioneer a dedicated national law. This law should:
 - Clearly define TCEs and their beneficiaries (prioritizing direct recognition of source communities).
 - Establish a **National Registry of TCEs** with robust digital documentation (audio, video, oral histories, crafting processes). This registry is the evidentiary bedrock for all future claims.

- Create a **“Prior Informed Consent and Benefit-Sharing” (PIC/BS)** mechanism. Any external commercial or significant non-commercial use of a registered TCE requires negotiation with the community/state trustee.
- Define clear civil and criminal penalties for misappropriation.

- **Empower a Dedicated Agency:** Create or empower a cross-ministerial agency (perhaps under the Coordinating Ministry for Human Development and Culture) with the mandate, budget, and expertise to manage TCE registration, international monitoring, and community liaison.

7.2. International Diplomacy & Advocacy: Changing the Game

- **Lead the Coalition in WIPO IGC:** Indonesia, with its vast cultural wealth, should galvanize the Group of Like-Minded Megadiverse Countries and others to push relentlessly for a **binding international treaty** at WIPO. The Sasando case is a perfect advocacy tool to demonstrate the urgency.
- **Leverage UNESCO Proactively:** Continue to inscribe key TCEs on UNESCO lists, but pair this with the

sui generis national registration. Use UNESCO recognition as a diplomatic lever to support WIPO negotiations.

- **Establish Bilateral Cultural IP Agreements:** Modeled on trade agreements, forge pacts with key partner nations for mutual recognition and protection of registered TCEs, creating a patchwork of protection while a global treaty is pending.

7.3. Community-Centered Action: The Heart of the Matter

- **“Cultural Mapping” at the Grassroots:** Support and fund communities themselves to document their own heritage, using participatory methods. This ensures accuracy, builds local capacity, and reinforces community ownership.
- **From Performers to Partners:** Integrate community representatives as full partners in diplomatic delegations and legal strategy teams. Their authority is irreplaceable.
- **Developing Cultural Enterprises:** Help communities develop ethical, community-controlled enterprises around their TCEs (e.g., certified Sasandos, cultural tourism, digital content). This creates a vested economic interest and demonstrates the sustainable value of protection.

7.4. Digital & Technological Strategy: 21st-Century Tools

- Create an **open-access (but legally documented) digital repository** of registered TCEs. This serves as a public record of origin and prior art, making unauthorized claims harder.
- Explore **blockchain technology** for creating tamper-proof, time-stamped certificates of origin and authenticity for cultural products.

8. Conclusion: The Sasando as a Call to Action

The attempted claim on the Sasando was more than a diplomatic incident; it was a metaphor for a global inequity. It revealed a world where the musical heritage of a small island community can become a file on a desk in Geneva, subject to laws that do not comprehend its essence. Indonesia’s successful defense was commendable but should not breed complacency. It was a tactical victory in a war that requires a new strategic doctrine.

Protecting the Sasando, and the thousands of TCEs like it, is not about locking culture away. It is about granting communities the **agency, dignity, and power** to control how their heritage engages with the world. It is about ensuring that when the sound of the Sasando travels across borders, it carries with it the story of the Rote people, and that any benefits derived from its beauty flow back to nourish its source.

The fight for the Sasando is a fight for a more just and pluralistic international order—one where the law catches up to the profound, ancient, and collective ways in which humanity creates beauty and meaning. By building robust domestic laws, leading international reform, and placing communities at the center, Indonesia can transform this vulnerability into strength, ensuring that the voices of its ancestors continue to resonate on their own terms for generations to come.

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