The case of Intellectual Property Law illustrated with traditional ikat textiles of Savu Discussion Paper by Geneviève Duggan

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The situation

For almost two decades experts have studied the scope of International Intellectual Property and its possible applications to the work of artists and artisans in developing countries. To sum up the scope of Intellectual Property in a few lines it can be said that the World Intellectual Property Organization (WIPO) aims at the "protection of traditional cultural expressions" [...] "empowering communities, preventing misappropriation of traditional cultural expressions of folklore". For instance it "contributes to safeguarding traditional cultures; encourages community innovation and creativity; promotes intellectual and artistic freedom" [...] It "contributes to cultural diversity, promotes community development and legitimates trading activities, precludes unauthorized IP rights, and enhances certainty, transparency and mutual confidence"¹.

The copyright law was defined in the West for individual artists, for protecting their personal creations and governs the use of tangible expression of intangible ideas. The point is that it refers to original works produced by identifiable creators². Intellectual Property (IP) models are based undeniably on individuals and not on communities. Yet the focus here is on Indonesian weavers, their work and patterns. Their hand-woven cloths traditionally produced at home are based on ancestral knowledge, which belongs to a group of women. However the producers of the cloths are not anonymous and sometimes they can trace the origin of a motif to an ancestress, several generations earlier. The cloths and their motifs act as identity markers and mirror the values of the group.

In the event that no individual ownership for a pattern is known the Indonesian State or the local administration holds the copyright. This applies not only to patterns but to all sort

¹ The following authors or articles served as basis for my research:

World Intellectual Property Organisation (WIPO for instance 2006-2009)

Traditional Culture: A Step Forward for Protection in Indonesia, a research report under the leadership of Professor Peter A. Jaszi, 2009; Lorraine Aragon, (2012, 2014 and 2016); Monique Bagal and Peter Damary (2016).

² Republic of Indonesia U U 19/2002 and U U 28/2014; quoted in Argon 2016: 171.

of cultural products that are owned in common. The State holds the copyright for anonymous work for 50 years³.

The conclusions of the various reports conducted on the subject in Indonesia appear rather disappointing. When I started discussing the subject with textile experts and researchers I was told that nothing can be done in matter of copyright law for protecting weavers' work. Or a different form of copyright law needs to be drafted that can protect a group of people, not only individuals⁴. The report of 2009 under the leadership of Peter Jaszi regarding the protection of traditional culture in Indonesia aimed at finding more effective ways of using the existing Indonesian intellectual property law. The report analyses various forms of IP and lists five fields aiming at protecting the traditional arts⁵. However these recommendations are already 10 years old and do not seem to have improved the situation so far in weavers communities. Aragon (2016: 173) explains that the cultural property law for autochthonous people as it is known in some countries cannot apply to Indonesia as it has no category of indigenous people. However Indonesians identify themselves under specific ethnic groups to which they are proud to belong. For example the ethnic group Savunese (*orang Sabu*) is not felt as derogatory among its members.

Instead of waiting for the drafting of new laws -- which might take so long to happen that the last weavers communities will have disappeared in the meantime -- it is perhaps worth looking at what can be done to protect weavers' work in the current situation.

In my view, the fact that Indonesia has no category of indigenous people and therefore cultural property laws cannot apply to Indonesians could be easily amended in listing ethnic groups and the types of traditionally hand-woven cloths these groups identify themselves with. Furthermore arguing that copyright law has been defined in the western world for individual artists and their new creations and is thus not applicable to groups of people who own ancient patterns is an erroneous argument. For instance in Europe copyright law in some cases not only protects individuals, but groups of people and does not necessarily refer to recent creations either. A number of patterns for the tartans of Scottish men are protected by a copyright law. The tradition of coats of arms in Europe is even more ancient. Created in the Middle Ages it served to identify knights who otherwise were unrecognizable under their armour. Such coats of arms have been transmitted over

³ See Jaszi: 2009: 52 and Aragon 2016: 174 referring to U U 19/2002 and U U 28/2014. This can create a dangerous situation for local communities which could be spoiled of their rights.

⁴ Bagal & Damary 2016: 195.

⁵ 2009: 95-97. The aims are: 1. Assure that traditional arts communities receive recognition; 2. Provide against misappropriation; 3. Empower traditional arts communities to prevent misuse; 4. Assure that relevant institutions are decentralized and transparent; 5. Avoid unnecessary disruptions of cultural practice.

generations up to the present-day and are protected by copyright law⁶. The tradition of coat of arms of men in the Middle Ages reminds me of the heraldic patterns woven on female sarongs of specific maternal lineages on the island of Savu. These patterns act group identity markers (*KTP kuno* or ancient identity cards). What is applicable to the former should be applicable to the latter. Interestingly coat of arms can undergo visual changes which have to be registered. Traditional motifs also can slightly change over time according to the inspiration of a weaver even if she feels truthful to the traditions, for instance if she combines various elements of ancestral motifs as seen further below. A change then needs to be registered. If registered as a trademark a pattern is not time-limited while if registered under copyright it is limited to 50 years after the death of its creator (Jaszi, 2009: 46).

Copyright and trademark for Savu textiles

The Savu island in the province of Nusa Tengara Timur (NTT) has kept strong weaving traditions linked to the local ancestors worship called *Jingi tiu*. The villages where traditional weavers are found in those villages where this worship is still practiced. This represents some 20% of the population. Since the origin, Savu society has been divided into two female moieties, a long time before the creation of male clans. Throughout time each moiety created more motifs reminiscent of important events; these primary motifs are thus restricted to the moiety. In addition, each moiety created subgroups (female lineages) and it has been proven that with the formation of a new lineage at least one pattern was created the use of which was restricted to that lineage. Such patterns are kept in the heirloom baskets in the home of the descendants of the ancestress who originated the pattern⁷.

For each primary pattern identifying one or the other moiety the founding ancestress is known; however these primary patterns are either based on a lozenge with hooks or on an undulating motif; these very ancient patterns are found elsewhere in the world and on various supports; thus they cannot be considered specific to Savu culture.





However the composition of the weaving clearly identifies the piece as belonging to one or the other Savu moiety (above right).

⁶ "A coat of arms is protected through copyright law and a coat of arms can be used as a trademark and will thus be protected by trademark law". Wikipedia accessed 28 .05. 2019.

⁷ Duggan 2001; 2013; 2018.







A single pattern made of undulating lines or lozenges reproducing an ancient design cannot be protected.



However the combination of three of more patterns placed next to each other allows identifying the piece as being from Savu. The collection of patterns as seen here could be protected, similar to elements constitutive of a coat of arms.





The combination of patterns and composition of a cloth identifies it with a female lineage on Savu.

The various elements can be registered in a list of requirements.

Half of the cloth (sarong) seen.





A variation of the motif above

Half of the cloth (sarong) seen.

For most patterns created by the founding ancestress of a lineage the following information is still kept:

- 1. The name of the ancestress and her place of residence are known.
- 2. The name of the pattern is known.
- 3. The narrative at the origin either of the female lineage or of the new pattern is known.
- 4. The genealogy between the founding ancestress and the present-day weaver producing the motif is known. The genealogies I recorded during almost three decades of fieldwork can comprise 10 to 20 generations. This indicates that a number of women have the right to the same specific motif(s) which means group ownership.

As a general rule not every motif on a cloth can claim Intellectual Property rights. A lozenge based motif that existed in the Tang dynasty in China, hooks motifs found in ancient Greece or on Dong Son drums, arrows and chevrons seen on textiles from Sumatra to Malaysia and Central Asia cannot be candidates for local copyright. There are indeed some very ancient motifs shared by a number of societies. It is obvious that for these primary patterns no copyright can be claimed.

Yet a combination of motif and composition can identify a cloth with an ethnic group so that a different type of label can protect local work, for example a Geographical Indication (GI).

On Savu for a dozen of female lineages and more than two dozen of patterns the four conditions listed above are fulfilled. As mentioned above a link between the creation of the motif and today's weaver, producer of the pattern is known through female genealogies. There are male genealogies as well as female genealogies remembered separately. In a number of cases the name of the father, brother, son or husband of an ancestress has been found in VOC manuscripts (starting in 1648) so that a link between male and female genealogies can be established and a rough date or period can be attributed to a pattern. (The Dutch administrators did not record the names of women).

For example the motif kobe molai:



Name of the ancestress at the origin of the pattern: Mojo Lado, clan (or male lineage) Namata, moiety Hubi ae (Greater Blossoms), female lineage: wini Ga Lena.

Mojo Lado was the wife of Haba Jami, the ruler of the polity Seba; their great grandson appears in a VOC document of 1684. Thus the motif can be dated to the late $16^{\rm th}$ C.

Name of the motif: Kobe molai. Narrative at the origin of the motif remembered (Duggan 2018: 138, 142)



A variation of the kobe molai motif created by Mojo Lado.

The general structure of the motif is recognizable. However this pattern combines elements of two patterns of the same maternal lineage. The horizontal branches refer to the *kobe molai* created in the 16th C, the vertical branches depict a pattern (*ruwengu*) created in the mid 18th C by a descendant of Mojo Lado.

A parallel can be established between the tradition of coats of arms (and tartans) in Europe and the tradition of heraldic patterns on female sarongs. They all serve as identity markers for groups of people.

The situation of Savu might be rather unique and it seems odd that ancient patterns cannot be protected when they are so well identified. I recommend that copyright be established for a number of patterns owned by a female lineage. As mentioned above no copyright can be claimed by the Savu weavers for the patterns at the origin of the moieties, as they are very ancient and found in other societies.

The situation on Savu might be comparable to other weaving cultures in Indonesia for which at least a number of patterns can be identified, registered and thus protected. A second way of protecting weavers' work is the creation of a Geographical Indication (GI).

Geographical indication.

A geographical indication (GI) "is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin"⁸. It applies not only to agricultural products, but also to handicrafts which are generally handmade using local

⁸ WIPO . *Geographical indications, an introduction*. https://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.pdf

natural resources and embedded in the traditions of local communities. Protection through geographical indication is a first step in empowering local weavers.

A GI specifies the place of origin of a cloth and how it has been produced. Home woven cloths in NTT are always produced on hand looms, i.e. back-tension looms. There might be more information like the name of the cloth, the nature of the yarns used, the technique used, the nature of the dyes (chemical or vegetable), the name of the weaver, the name of the dyer in case of natural dye. This has to be registered in a list of requirements established locally. For instance it provides information about the quality of the product, its reputation or characteristics and the origin of the product must be proven⁹.

Examples of Savu ikats which fulfill the conditions for the creation of a geographical indication (GI). A label provides information about:

1. The quality of the product as established:

Cotton for the warp and weft threads

Technique: warp ikat technique

Hand-woven cloth on a back-tension loom (no ATM or ATBM allowed).

2. The reputation or the characteristics of the product as defined:

Special category for cloths produced with natural dyes.

Special mention if the cloth is made with hand spun cotton.

Special mention if traditional colours of Austronesian people (blue to black, red and the natural colour of cotton).

Name of the motif. If an ancestral motif, name of the weaver's maternal lineage which has the right to produce the motif.

3. The origin of the product:

Name of the weaver (and name of the dyer in case of vegetable dyes: indigo and *morinda*).

Name of the cooperative or name of the hamlet or of the village where the piece was produced.

Year of production.

⁹ As discussed in Bagal & Damary, 2016: 189-192.

Should copyright or a trademark not be possible for a number of traditional Savu motifs, a Geographical Indication can be chosen instead. For registering weavers' work it is important not to focus on patterns only, but on a combination of patterns and composition of the hand-woven cloths. A Geographical Indication has a weakness. The motifs still can be copied in other areas and sold without the label. However it is a first step that gives moral support (recognition), and confers pride and confidence to local weavers.

Conclusion

Registering for copyright, trademark or Geographical Indication appears to be a slow process in Indonesia. For example the Indonesian-Swiss Intellectual Property Project for the Sikka Regency (Flores) which started in 2012 successfully registered Sikka as Geographical indication for Sikka's hand-woven cloths in 2016. However the identification of patterns for copyright protection seems to be an ongoing process¹⁰. Establishment of a trademark could be an alternative to copyright as "the requirements for trademark registration are relatively few and relatively clear"¹¹.

The entire discussion about various forms of Intellectual Property rights presupposes that weavers' communities have access to technical and legal assistance. A budget for such a project needs to be allocated at the Regency or at the provincial level. I am aware that the various forms for protecting local weavers' work in their tangible and intangible aspects presented in this paper will not be a solution for all. Considering IP aspects only would narrow the discussion at the Roundtable.

The paper aims at inspiring participants to look in various directions for possible solutions for protecting weavers' work, identity and for improving their economic opportunities, as well as for starting a discussion. We wish to hear of participants' experiences, to share thoughts and develop solutions. We hope to receive as many contributions as possible as the current situation is alarming; indigenous weaving traditions are in sharp decline.

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¹⁰ Bagal and Damary 2016: 194. Monique Bagal personal communication 30.03.2019.

¹¹ Jaszi 2009: 47.

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