

# Reformulating the Regulation of Traditional Food-Making as Traditional Knowledge under Indonesia's Communal Intellectual Property Law

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## ABSTRACT

This article examines the normative ambiguity surrounding the legal status of traditional food-making within Indonesia's communal intellectual property regime, particularly under Article 8(a) of Government Regulation No. 56 of 2022 concerning Communal Intellectual Property. The provision lists "traditional methods or processes" as one form of Traditional Knowledge, but it does not define the phrase or expressly include traditional food-making. This lack of definitional precision creates legal uncertainty for communities whose culinary techniques, ingredient-selection practices, processing sequences, utensils, presentation rituals, and cultural meanings have been transmitted across generations. Using normative legal research, this article applies statutory, conceptual, systematic, teleological, and reform-oriented approaches to primary legal materials and selected scholarly sources on Traditional Knowledge, communal intellectual property, legal certainty, and utilitarian jurisprudence. The analysis shows that traditional food-making substantively satisfies the elements of Traditional Knowledge because it embodies communally held know-how, skills, technical practices, cultural values, and intergenerational transmission. Nevertheless, the absence of explicit normative clarification may generate inconsistent interpretation, weak inventory practices, and limited protection against unilateral commercial appropriation. The article proposes a reformulation of Article 8(a) by defining "traditional methods or processes" as including the entire sequence of traditional food-making, from local ingredient selection and processing techniques to traditional equipment, serving practices, and embedded cultural meanings. The article further recommends technical guidelines, systematic documentation, regional government participation, community education, benefit-sharing mechanisms, and accessible dispute-resolution procedures. The proposed reformulation is expected to strengthen legal certainty, enhance substantive justice for custodian communities, and align Indonesia's communal intellectual property framework with the broader international discourse on Traditional Knowledge protection.

## Keywords:

communal intellectual property; legal certainty; normative ambiguity; traditional food-making; traditional knowledge

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## INTRODUCTION

Intellectual property law has historically been structured around individual or corporate authorship, inventive activity, and market-oriented exclusivity. In many jurisdictions, this model is reflected in copyright, patent, trademark, industrial design, trade secret, and plant variety protection regimes. However, cultural and technological realities in many communities do not always fit the individualistic architecture of conventional intellectual property law. Knowledge may be generated collectively, preserved orally, transmitted through practice, and maintained as part of a community's cultural identity rather than as the asset of a single identifiable author or inventor (Dutfield, 2004; Oguamanam, 2006; WIPO, 2020).

Traditional Knowledge occupies this complex legal space. WIPO defines Traditional Knowledge broadly as knowledge, know-how, skills, and practices that are developed, sustained, and transmitted from generation to generation within a community. It may include agricultural, ecological, medicinal, technical, and biodiversity-related knowledge (WIPO, 2020). In the Indonesian context, Traditional Knowledge is one component of Communal Intellectual Property, together with traditional cultural expressions, genetic resources, and potential geographical indications. The inclusion of Communal Intellectual Property within the Indonesian legal framework reflects the state's recognition that intellectual assets are not always individually owned, and that collective cultural resources require legal protection, inventory, and governance (Dharmawan et al., 2016; Syafi'i, 2023).

Traditional food-making is a particularly important form of community-based knowledge. It is not limited to the final food product. Rather, it includes the selection of local ingredients, inherited recipes, cooking techniques, fermentation or preservation methods, utensils, sequence of processing, modes of presentation, ceremonial context, and symbolic meanings attached to food. Such practices may be transmitted through family lines, customary institutions, village communities, or regional culinary traditions. In this sense, traditional food-making is both technical knowledge and cultural practice (Harsana & Triwidayati, 2021; Putri et al., 2024; UNESCO, 2003).

The legal problem arises when the normative text recognizes broad categories of Traditional Knowledge but does not expressly clarify whether traditional food-making falls within those categories. Article 8 of Government Regulation No. 56 of 2022 concerning Communal Intellectual Property enumerates several forms of Traditional Knowledge, including "traditional methods or processes," technical skills, agricultural knowledge, ecological knowledge, medicinal knowledge, social organization systems, and other forms of knowledge according to development. Yet the provision does not define "traditional methods or processes," and its elucidation merely states that the article is sufficiently clear. This creates an interpretive gap: traditional food-making may be conceptually included, but its normative status is not explicitly secured.

The absence of explicit wording concerning traditional food-making is not merely semantic. Normative ambiguity may affect legal inventory, evidentiary documentation, administrative recognition, benefit-sharing, and dispute resolution. Communities may face difficulty asserting collective interests when food-related knowledge is commercialized by third parties, especially through flavour adaptation, branding, industrial replication, or tourism-oriented commodification. Commercial examples inspired by regional dishes such as rendang or sambal matah illustrate the economic value of culinary knowledge, although such examples should not automatically be treated as infringement without a proper legal and factual analysis. The central issue is that communities require a clearer legal basis to identify, document, and claim protection over the knowledge and process underlying traditional food-making.

Existing Indonesian scholarship has discussed the protection of Communal Intellectual Property, Traditional Knowledge, traditional food as cultural identity, and the problem of vague norms in legislation (Haeruman & Rusnan, 2021; Herlina, 2024; Turnip, 2021). However, the specific question of whether the process of making

traditional food should be expressly reformulated as Traditional Knowledge under Article 8(a) of Government Regulation No. 56 of 2022 remains underdeveloped. This article addresses that gap by offering a doctrinal and reform-oriented analysis of the phrase “traditional methods or processes” and proposing a more operational normative formulation.

This article addresses two research questions: (1) How does Article 8(a) of Government Regulation No. 56 of 2022 create normative ambiguity regarding traditional food-making as Traditional Knowledge? (2) How should the provision be reformulated to provide legal certainty and effective protection for communities that preserve traditional food-making knowledge?

The article contributes to legal scholarship and policy reform in three ways. First, it clarifies that traditional food-making should be understood as processual knowledge rather than merely as a consumable product. Second, it applies systematic and teleological interpretation to demonstrate that traditional food-making falls within the scope of “traditional methods or processes.” Third, it formulates proposed normative language and implementation measures that may guide future technical regulations, administrative guidelines, or amendment of the existing legal framework.

## METHODS

This study uses normative legal research. It focuses on legal norms, statutory language, conceptual categories, and doctrinal interpretation rather than empirical measurement. Normative legal research is appropriate because the core issue is the ambiguity of a legal provision and the need to formulate a clearer regulatory construction. The study is therefore concerned with how the law ought to define, interpret, and protect traditional food-making as a form of Traditional Knowledge.

The primary legal materials consist of Government Regulation No. 56 of 2022 concerning Communal Intellectual Property and Regulation of the Minister of Law and Human Rights No. 13 of 2017 concerning Communal Intellectual Property Data. Supporting legal materials include selected international instruments relevant to Traditional Knowledge, cultural heritage, community rights, and benefit-sharing, including the Convention on Biological Diversity, the Nagoya Protocol, the United Nations Declaration on the Rights of Indigenous Peoples, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, and the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (CBD, 1992; Nagoya Protocol, 2010; UNESCO, 2003; United Nations, 2007; WIPO, 2024).

Secondary materials include books, journal articles, and institutional publications discussing intellectual property, Traditional Knowledge, communal rights, interpretive methods, legal certainty, and utilitarian jurisprudence. Tertiary materials such as legal dictionaries and encyclopaedic sources are used only to support conceptual clarification.

The analysis combines statutory, conceptual, systematic, teleological, and reform-oriented approaches. The statutory approach examines the wording and structure of relevant Indonesian regulations. The conceptual approach clarifies the doctrinal meaning of Traditional Knowledge, communal ownership, and traditional processes. The systematic approach interprets Article 8(a) in relation to the broader structure of Government Regulation No. 56 of 2022 and Communal Intellectual

Property law. The teleological approach identifies the regulatory purpose of protecting community-based knowledge from misappropriation and unilateral claims. Finally, the reform-oriented approach formulates alternative wording that can reduce ambiguity and improve administrative implementation (Askarial, 2018; Priono, 2017).

## RESULTS AND DISCUSSION

### 1. Communal Intellectual Property and Traditional Knowledge in Indonesian Law

Indonesian law distinguishes between personal intellectual property and communal intellectual property. Personal intellectual property is generally attached to individual or legal-person ownership, while Communal Intellectual Property is attached to collective cultural, biological, and knowledge-based resources held by communities. Regulation of the Minister of Law and Human Rights No. 13 of 2017 defines Communal Intellectual Property as intellectual property consisting of Traditional Knowledge, traditional cultural expressions, genetic resources, and potential geographical indications. Government Regulation No. 56 of 2022 further consolidates the regulatory framework by establishing categories, inventory mechanisms, and protection principles for Communal Intellectual Property.

This distinction is important because traditional food-making rarely has a single identifiable creator. Its techniques may have emerged gradually through repeated community practice, adaptation to local ecological conditions, and intergenerational learning. The community's claim is therefore not analogous to an individual copyright claim over a written recipe or a patent claim over a technical invention. Rather, the legal object is a body of collective know-how and cultural practice that requires recognition, documentation, and protection within the Communal Intellectual Property framework.

The difference between the underlying knowledge and its expression must be maintained. Copyright may protect written cookbooks, photographs, audiovisual documentation, or artistic expressions related to traditional food. Trademark law may protect business signs, while geographical indication law may protect products strongly linked to origin and quality. However, the underlying traditional know-how itself is not adequately protected by conventional individual intellectual property regimes. This is why the Communal Intellectual Property framework is normatively significant (Dutfield, 2004; WIPO, 2020).

### 2. Normative Ambiguity in Article 8(a) of Government Regulation No. 56 of 2022

Article 8 of Government Regulation No. 56 of 2022 lists the forms of Traditional Knowledge as: traditional methods or processes; technical skills; skills; learning; agricultural knowledge; technical knowledge; ecological knowledge; knowledge related to genetic resources; medicinal knowledge, traditional medicine, and healing procedures; economic systems; social organization systems; knowledge relating to behaviour toward nature and the universe; and other forms of knowledge according to development. The list is broad and inclusive. However, Article 8(a) does not define the phrase "traditional methods or processes." The official elucidation also does not clarify the scope of the phrase.

The legal ambiguity lies in the gap between broad wording and limited operational guidance. On one hand, "traditional methods or processes" can

reasonably include traditional food-making because food preparation consists of inherited steps, techniques, tools, and community meanings. On the other hand, the absence of explicit clarification may lead officials, businesses, or communities to interpret the provision differently. Some may treat the category as limited to technical production methods outside the culinary sphere; others may include food-making only when linked to agriculture or medicine. Such inconsistent interpretation weakens legal certainty and may reduce the effectiveness of Communal Intellectual Property protection.

Legal certainty requires that legal norms be sufficiently clear, predictable, and administratively applicable. A vague norm may still be interpreted by courts or administrative agencies, but if the ambiguity concerns the scope of protection, the practical burden often falls on vulnerable communities. In the context of Traditional Knowledge, uncertainty may result in under-documentation, delayed recognition, and difficulty preventing unilateral claims. This confirms the need for a more precise formulation (Herlina, 2024; Radbruch, 2006).

### **3. Traditional Food-Making as Processual Traditional Knowledge**

Traditional food-making should be understood as processual Traditional Knowledge. It consists of more than the name of a dish or the finished product sold in the market. A traditional dish usually embodies a sequence of knowledge: identifying suitable ingredients, determining proportions, applying processing methods, controlling heat, timing fermentation, drying, roasting, grinding, pounding, wrapping, serving, and embedding food within ceremonial or social contexts. These activities are learned through practice and transmitted within a community over time.

This processual character corresponds to the broad understanding of Traditional Knowledge in international discourse. WIPO emphasizes that Traditional Knowledge includes know-how, practices, skills, and innovations arising from intellectual activity in a traditional context (WIPO, 2020). UNESCO's intangible cultural heritage framework also recognizes that practices, representations, expressions, knowledge, and skills transmitted across generations can form part of cultural heritage (UNESCO, 2003). Although intangible cultural heritage law and intellectual property law are distinct regimes, their conceptual overlap supports the argument that traditional food-making may constitute both cultural heritage and protectable community knowledge.

The Indonesian culinary context provides strong examples of such processual knowledge. Practices associated with *rendang*, *sambal matah*, fermented foods, ceremonial rice dishes, traditional cakes, herbal drinks, and regional spice preparations are not reducible to commodities. They include local ecological knowledge, inherited techniques, and social meanings. Where such knowledge is commercially utilized by third parties, the core legal question is not whether every commercial adaptation should be prohibited. Rather, the question is how law can ensure recognition, prevent misleading or unilateral claims, promote fair benefit-sharing, and preserve community control over knowledge documentation and use.

### **4. Theoretical Justification: Utilitarianism and Legal Certainty**

The reformulation of traditional food-making as Traditional Knowledge can be justified through utilitarian theory and the theory of legal certainty. Jeremy Bentham's utilitarianism evaluates law by its capacity to maximize social benefit and minimize harm. In the context of Communal Intellectual Property, a legal norm that recognizes

traditional food-making as protectable knowledge may generate cultural, economic, and social benefits for custodian communities. It may support community-based entrepreneurship, culinary tourism, cultural education, and fair commercialization while discouraging exploitative appropriation (Bentham, 1789/2000).

However, utilitarian justification must not be reduced to market value alone. Traditional Knowledge protection should benefit communities not merely by enabling commercialization, but also by preserving identity, preventing misrepresentation, sustaining intergenerational transmission, and respecting customary interests. The greatest social benefit is achieved when cultural preservation and economic participation are balanced.

Legal certainty is equally important. Radbruch's legal philosophy places certainty alongside justice and purposiveness as central legal values. In legislative drafting, certainty requires that citizens and legal subjects can understand the scope and consequence of legal norms (Radbruch, 2006). If Article 8(a) remains undefined, the protection of traditional food-making will depend heavily on discretionary interpretation. A clear formulation would provide a more predictable basis for inventory, administrative recognition, community claims, and dispute resolution.

### **5. Systematic and Teleological Interpretation**

A systematic interpretation supports the inclusion of traditional food-making within Article 8(a). The phrase "traditional methods or processes" appears within a broader list of Traditional Knowledge categories, including technical skills, agricultural knowledge, technical knowledge, ecological knowledge, medicinal knowledge, and knowledge related to genetic resources. These categories indicate that the regulation is intended to protect knowledge expressed through practical methods and community-based skills. Traditional food-making fits this structure because it combines local ingredients, ecological adaptation, technical processing, and inherited communal practice.

Teleological interpretation reaches the same conclusion. The purpose of Communal Intellectual Property regulation is to identify, inventory, recognize, and protect knowledge and cultural resources held by communities. A narrow interpretation that excludes traditional food-making would undermine that purpose, especially in a country where culinary practices are deeply embedded in local identity and increasingly exposed to commercialization. Therefore, the purpose of the regulation is better served by expressly recognizing traditional food-making as part of "traditional methods or processes."

### **6. Proposed Normative Reformulation**

The ambiguity of Article 8(a) can be addressed by adding an explanatory clause or amending the relevant provision. The following formulation is proposed:

"Traditional methods or processes" as referred to in this provision include all sequences of activities developed, maintained, and transmitted across generations by a community, including but not limited to traditional food-making, local ingredient selection, processing techniques, traditional equipment, preservation methods, serving practices, and the cultural values attached to such practices"

A complementary clause should also be added:

"Protection of Traditional Knowledge includes not only the final product, but also the process, method, know-how, skill, and cultural meaning underlying it, with due respect for the rights and interests of the community as the custodian of such knowledge"

This formulation has three advantages. First, it clarifies that traditional food-making is included without closing the category to other traditional processes. Second, it

recognizes the process, method, and knowledge underlying traditional food rather than merely the final product. Third, it places community rights at the centre of protection and thereby supports benefit-sharing, cultural preservation, and prevention of unilateral claims.

**Table 1. Proposed direction for reformulating Article 8(a) of Government Regulation No. 56 of 2022.**

Regulatory element	Identified ambiguity	Proposed clarification	Expected legal effect
Article 8(a): "traditional methods or processes"	No definition or example is provided; the elucidation states only that the provision is sufficiently clear.	Add a definition that expressly includes traditional food-making as a sequence of inherited community practices.	Reduces multi-interpretation and supports more consistent administrative inventory.
Object of protection	The provision may be read as protecting only categories of knowledge, without clarifying whether the final product and the process are both relevant.	Clarify that protection covers the process, method, know-how, skill, and cultural meaning underlying traditional food-making.	Strengthens community claims and prevents reduction of traditional food to a mere commodity.
Implementation	No operational criteria are provided for documenting traditional food-making as Traditional Knowledge.	Issue technical guidelines on documentation, consent, verification, access control, and benefit-sharing.	Improves practical protection and reduces the risk of appropriation through careless disclosure.

## 7. Implementation Measures

Normative reformulation should be followed by concrete implementation. First, the competent ministry should issue technical guidelines specifying how traditional food-making may be identified, inventoried, and documented as Traditional Knowledge. The guidelines should include criteria such as intergenerational transmission, community recognition, locality, distinctive process, cultural meaning, and continuing practice.

Second, inventory and documentation should record not only the name of the traditional food but also the process of making it. Documentation should include ingredients, tools, stages of preparation, preservation methods, serving traditions, customary restrictions, and community narratives. However, documentation must be conducted carefully because public disclosure may expose Traditional Knowledge to further appropriation. WIPO's documentation toolkit warns that documentation projects should consider ownership, consent, access control, and intellectual property consequences before knowledge is recorded or digitized (WIPO, 2017).

Third, regional governments should play an active role in identification and verification. Traditional food-making is often locally specific; therefore, local governments are better positioned to coordinate with customary communities, culinary practitioners, cultural offices, and local archives. Their role should include community consultation, verification of living practice, and coordination with the national Communal Intellectual Property database.

Fourth, legal awareness programs are needed. Many communities understand traditional food as inheritance, custom, or livelihood, but not necessarily as an intellectual asset requiring legal documentation. Education programs should explain the distinction between cultural preservation, commercial use, moral recognition, benefit-sharing, and legal remedies. Such programs should be designed in accessible language and delivered through community institutions.

Fifth, dispute-resolution and monitoring mechanisms should be strengthened. Disputes may arise when businesses use traditional food-related knowledge without acknowledgement, when products are marketed with misleading cultural claims, or

when community knowledge is documented without consent. Accessible administrative complaints, mediation, and community-based dispute-resolution mechanisms should be developed to prevent prolonged litigation and ensure fair remedies.

## 8. Legal and Policy Implications

The proposed reformulation has several implications. For the legislature and regulators, it provides clearer drafting language that can be incorporated into an elucidation, implementing regulation, or future amendment. For administrative agencies, it offers operational criteria for inventory and verification. For local governments, it establishes a basis for documenting regional culinary knowledge as part of Communal Intellectual Property. For communities, it strengthens recognition of collective rights and supports claims for fair use, attribution, and benefit-sharing. For businesses, it creates clearer expectations regarding respectful and lawful use of traditional food-related knowledge.

The reformulation also aligns Indonesian law with the broader international movement toward recognizing community-based knowledge. The WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, adopted in 2024, reflects increasing international attention to the relationship between intellectual property, Traditional Knowledge, and disclosure obligations (WIPO, 2024). Although the treaty primarily addresses genetic resources and associated Traditional Knowledge in patent contexts, it signals a broader normative shift: intellectual property systems can no longer ignore knowledge systems held by Indigenous Peoples and local communities.

## 9. Limitations and Future Research

This article is limited to normative legal analysis. It does not empirically examine how communities, local governments, or businesses currently understand traditional food-making as Traditional Knowledge. Future research should conduct field studies in selected regions to examine documentation practices, community consent, local government capacity, and potential benefit-sharing models. Comparative studies with countries that have specific protection models for traditional culinary knowledge or intangible cultural heritage would also strengthen future policy reform.

## CONCLUSION

Article 8(a) of Government Regulation No. 56 of 2022 creates normative ambiguity because it recognizes “traditional methods or processes” as Traditional Knowledge without defining the phrase or expressly mentioning traditional food-making. This ambiguity may produce inconsistent interpretation and legal uncertainty in the protection of community-based culinary knowledge. Traditional food-making substantively satisfies the elements of Traditional Knowledge because it contains inherited techniques, practical skills, local ecological knowledge, cultural values, and intergenerational transmission.

Through systematic and teleological interpretation, traditional food-making can be understood as part of the “traditional methods or processes” protected under Indonesia’s Communal Intellectual Property regime. Nevertheless, interpretive inclusion alone is insufficient. A clearer normative formulation is required to ensure predictable administrative implementation, stronger community recognition, and better prevention of unilateral commercial claims.

This article proposes that the regulation expressly define “traditional methods or processes” to include traditional food-making, local ingredient selection, processing techniques, traditional equipment, preservation methods, serving practices, and embedded cultural values. Protection should extend not only to the final product, but also to the process, method, know-how, skill, and cultural meaning underlying it. The proposed reformulation should be supported by technical guidelines, systematic documentation, regional government involvement, legal education, benefit-sharing mechanisms, and accessible dispute resolution. Such reform would enhance legal certainty, utility, and substantive justice for communities that preserve Indonesia’s traditional culinary heritage.

## Declarations

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**Data availability:** The legal materials analysed in this article are publicly available statutory and institutional materials.

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