

## THE POTENTIAL OF TRADITIONAL KNOWLEDGE AS AN IMPROVEMENT OF THE WELFARE OF COMMUNAL COMMUNITIES

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### *Abstract*

Intellectual property produced by indigenous or traditional communities still not accommodated by regulations regarding Intellectual Property Rights. regarding the protection and recognition of communal intellectual property has been of concern to society and international organizations. Right now it is There are many claims made by other nations regarding the results of natural wealth as well as the cultural intellectual property of Indonesian society. Every ethnic group in Indonesia is believed to inherit communal intellectual property which is created based on human interaction with the natural environment in order to provide a way out of life's problems. This traditional knowledge is then manifested as a form of communal intellectual property in the perspective of the intellectual property rights legal regime. The government through the Ministry of Law and Human Rights, especially the Directorate General of Intellectual Property Rights, needs to immediately carry out intensive discussions on the Draft Law on the Protection of Traditional Knowledge and Traditional Culture Express. Efforts to overcome the challenges faced by the Government in providing intellectual property protection for traditional knowledge and traditional cultural expressions are carried out by the Government through the Ministry of Law and Human Rights, especially the Directorate General of Intellectual Property Rights, including, among other things, conducting open and continuous outreach and/or campaigns regarding knowledge understanding. traditional and traditional cultural expressions.

**Keywords:** *Traditional Knowledge, Communal Society.*

## INTRODUCTION

Law in the field of intellectual property also includes communal rights and personal rights (Nugroho, 2015). Intellectual Property produced by indigenous or traditional communities includes several things ranging from traditional knowledge systems, works of art, literary works, philosophy, history, language, notes on the development of art, customary law, medicine, batik, folk games, dances, and traditional architecture. Communal intellectual

property rights are owned collectively or communally by indigenous communities which are structured, guarded and maintained by tradition.

Intellectual property produced by indigenous or traditional communities still not accommodated by regulations regarding Intellectual Property Rights. regarding the protection and recognition of communal intellectual property has been of concern to society and international organizations. Right now it is There are many claims made by other nations regarding the results of natural wealth as well as the cultural intellectual property of Indonesian society.

From the perspective of society, it is still unfamiliar with the term traditional knowledge in its definition, linguistically it is not easy to understand, but if it is interpreted as what is called traditional knowledge then in fact traditional knowledge is already present and alive in society. Several terms in literature that examine traditional knowledge include local knowledge, indigenous knowledge and traditional knowledge itself.

However, these three terms essentially have principles that both focus on known knowledge for a long time in a particular community in a country (Saleh, 2010). Although there are still many different definitions of traditional knowledge in international discussions. Traditional knowledge in a national legal dictionary is traditional knowledge owned by regional communities or traditions that have been passed down from generation to generation, which includes the fields of art, plants, architecture, and so on (M.Marwan & Jimmy, 2009). *Tradistional knowledge* is a general term that includes creative expressions, information, etc. that can be specifically seen as having their own characteristics and can identify a social unit.

M. Hawin. in the draft of his inauguration speech as a professor at the Faculty of Law, Gadjah Mada University, Traditional knowledge is knowledge developed by indigenous communities or intellectual works based on tradition. This knowledge or work is used by one generation and passed on to the next generation and develops according to the needs of the people of a particular region.

Traditional knowledge includes methods of cultivating and processing plants (agriculture), treatment, medicines, food and drink recipes, art and so on. Henry Sulistyono, quoted by Muhammad Djumhana, also defines traditional knowledge as knowledge whose status and use or usage is part of the dark cultural traditions of society (Djumhana, 2006).

## **RESEARCH METHOD**

A research cannot be said to be research if it does not have a research method (Koto, 2021). Research methods are one of the factors of a problem that will be discussed. The type of research used in this research is normative legal research. This research was conducted using a statutory approach. The statutory approach is carried out by reviewing all laws and regulations that are related to the legal issue being handled. (Marzuki, 2017). Analysis of legal materials is carried out using qualitative analysis methods which are used to explain legal events, legal materials or legal products in detail to facilitate legal interpretation (Zainuddin & Ramadhani, 2021).

## **DISCUSS AND ANALYSIS**

## **The Potential of Traditional Knowledge to Improve the Welfare of Communal Communities**

The Big Indonesian Dictionary (KBBI) means the word communal, namely belonging to the people or the general public. Partially interpreted, human rights are always synonymous with individualistic nature. The internationalization of human rights postulates the existence of collective rights or communal rights inherent in the existence of a group and society. The quality of humans as members of a social group, humans become subjects of collective rights if these demands are based on a common interest in determining their own destiny (A.B.Wiranata, 2005). said the communal order of thinking, individuals always place priority behavior patterns on the group's ego, and at that time the group's ego will be defeated by the group's superiority, this is based on the thought pattern of the concept of Customary Law. The meaning of this statement is that as a member or part of a group, humans in customary law are people who are bound to society and are no longer individuals who are basically free in all their actions. The communal concept in customary law describes the basis for the formation of society or social life as originating from several factors such as togetherness, solidarity and kinship. Collective or communal is very closely related to groups or in this research more specifically referred to as indigenous communities. Hurst Hannum defines indigenous peoples as part of a "nation" society based on historical experiences that have an influence on their way of life and values. Sampford stated that recognition of collective rights as human rights provides benefits for group life. These collective rights accommodate everyone's right to access culture and participate in cultural activities based on personal affinity as members of a particular community group In relation to Cultural Human Rights as a collective right of society, Miranda Risang Ayu identifies cultural rights as follows:

1. Cultural rights focus on the existence of minority groups;
2. Cultural rights relate to all aspects of culture in the customary law of a particular group of people, including the right to use their own or local language and the right to adhere to their own beliefs or religion;
3. Cultural rights involve immaterial and material aspects, including spiritual aspects of the cultural system;
4. Cultural rights are generally considered collective rights;
5. Cultural rights always have a historical nature. The above cultural aspects to which rights are inherent have usually been passed down from generation to generation, making it difficult to determine the authenticity of some elements of individual authors.

Based on the study of the concept of "communal" in Customary Law, ownership of traditional cultural expressions, traditional knowledge, geographical indications and genetic resources has an inherent communal nature. Every ethnic group in Indonesia is believed to inherit communal intellectual property which is created based on human interaction with the natural environment in order to provide a way out of life's problems. This traditional knowledge is then manifested as a form of communal intellectual property which in the perspective of the intellectual property rights legal regime consists of four components. that is:

Traditional cultural expressions, genetic resources, geographical indications and traditional knowledge itself. This is also known as intangible cultural heritage. This intangible

cultural heritage, passed down from generation to generation, is continuously recreated by various communities and groups as their response to their environment, their interactions with nature, and their history, and provides they mean identity and sustainability, to promote respect for cultural diversity and human creativity.

Article 7, Regulation of the Minister of Law and Human Rights No. 13 of 2017 concerning Communal Intellectual Property Data states that there is an obligation to inventory communal intellectual property by the Ministry of Law and Human Rights which can collaborate with the Regional Government, although on the one hand the Regional Government only carries out a supporting role for the Ministry, however it also becomes regional government affairs in carrying out cultural management, preserving traditions and improving the quality of life of people in the region Therefore, fair protection is needed to make indigenous communities truly rich in traditional, practical knowledge which can be utilized to advance prosperity, and even with good management, it can become a potential for indigenous communities.

There are two forms of ownership of Intellectual Property, namely Personal Ownership and Communal Ownership. Intellectual property related to Traditional Cultural Expressions has several terms in the national and international context. The term "folklore" was proposed by William in 1846. The definition of this term includes manners, habits, observations, superstitions, ballads and proverbs. Then in 1989 internationally, UNESCO defined folklore as the entire tradition-based creation of a cultural community, which is expressed by a group of people and recognized as reflecting their cultural and social identity; its standards and values are passed down verbally, by imitation, or by other means. The forms include, among others, language, literature, music, dance, games, mythology, rituals, customs, crafts, architecture and other arts. This term was later changed to Traditional Cultural Expressions in the WIPO working group because the term 'folklore' was seen as pejorative in certain cultures, regions and countries.

### **Efforts Must Be Made So that Traditional Knowledge Gets Protection**

The government through the Ministry of Law and Human Rights, especially the Directorate General of Intellectual Property Rights, needs to immediately carry out intensive discussions on the Draft Law on the Protection of Traditional Knowledge and Traditional Cultural Expressions to obtain a legal rule format that is able to accommodate the characteristics of traditional knowledge and traditional cultural expressions in a way that Indonesia This is done by involving the active participation of stakeholders including, among others, the Ministry of Tourism and Creative Economy, the Ministry of Education and Culture, the Ministry of Research and Technology, the Ministry of the Environment, the Ministry of Agriculture, the Ministry of Industry and Trade, the Ministry of Home Affairs, Ministry of Foreign Affairs as well as elements from indigenous communities, academics and non-governmental organizations who are concerned about the substance of traditional knowledge and traditional cultural expressions.

Efforts to overcome the challenges faced by the Government in providing intellectual property protection for traditional knowledge and traditional cultural expressions are carried out by the Government through the Ministry of Law and Human Rights, especially the Directorate General of Intellectual Property Rights, including, among other things, conducting open and continuous outreach and/or campaigns regarding knowledge understanding. traditions and

traditional cultural expressions that must be protected; equalize the different paradigms of stakeholders and the existence of stakeholders in responding to the existence of traditional knowledge and traditional cultural expressions while providing legal protection. take the initiative to create a database of traditional knowledge and traditional cultural expressions and build a working network with various stakeholders in carrying out supervision in the field on indications of the use of traditional knowledge and traditional cultural expressions without permission.

Regional Governments at the Provincial and Regency/City levels should provide guidance to Indigenous Communities in all regions in Indonesia and facilitate the formation of organizations or institutions that represent them in the form of legal entities. The existence of organizations or institutions that are legal entities provides convenience and a stronger bargaining position when indigenous communities relate to parties outside the indigenous community. These relationships include, among other things, related to partnerships with parties who have the same commitment and/or at the implementation stage of compensation for the use of traditional knowledge and traditional cultural expressions of indigenous communities. If the organization or institution has been formed from various indigenous communities in Indonesia, they can form a kind of alliance to be able to speak louder and carry out a pressure group function to fight for the rights and interests of Indonesia's indigenous peoples, especially the protection of intellectual property for traditional knowledge and traditional cultural expressions.

The issue of requirements or criteria is related to the fact that most of traditional knowledge has become public domain. Is something that is already in the Public Domain eligible for protection? If something has become public domain, it is no longer possible to receive protection. then perhaps no traditional knowledge will receive protection. Presumably the protection criteria must be linked to other things, apart from the public domain.

WIPO provides an example of a law that applies in Panama. According to the country's applicable laws, traditional protection is limited to: (a) traditional knowledge that reflects the cultural identity of local communities; and (b) traditional knowledge which has high sensitivity if commercialized. According to the first limitation, traditional knowledge that is protected is knowledge that is related to the community. The second limitation concerns the sensitivity of the traditional knowledge in question if commercial action is taken against it. However, it should be noted that the restrictions imposed in Panama are not necessarily suitable for application in other countries, such as Indonesia. If the restrictions implemented in Panama are accepted, the misappropriation process will continue. If the Panama model restrictions are implemented, then local communities in Africa will never be able to demand justice from the use of their traditional technology for the katenzte plant which functions as a sweetener, which is then patented by companies in the United States. Therefore, it seems necessary to set other criteria. In this case, WIPO proposes the "documentation" criterion, meaning that protection will only be given to traditional knowledge that has been documented. This criterion may be quite realistic and make it easier to prove the protection mechanism.

In this case, the government has the authority to carry out inventory/documentation and registration of traditional knowledge in a General Register of Indonesian Traditional Knowledge, and establish a network of traditional knowledge management information systems. Even if the documentation system is implemented in Indonesia, the Indonesian government will

face quite big problems because the majority of traditional knowledge in Indonesia has not been documented. Presumably to meet these criteria, the Indonesian government must work hard to implement the documentation project.

1. How to protect it

Referring to Duffield, in order to protect traditional knowledge, there are at least three protection models that can be developed, namely: (Timmermans, 2001)

Utilizing Pre-Existing Regulations	Modifications/Additional/Complementary Rules	Developing Sui Generis Specific Regulations'
Customary law	Codification and formal recognition of provisions in customary law	
Contracts, equitable transfer agreements, and other public and civil law concepts	Access and profit sharing agreements	Provisions for biodiversity management with obligations regarding traditional knowledge; access to statutory regulations.
Intellectual property rights law	Material origin certificate, Prior Inform Consent (PIC), etc.	A new category in intellectual property law.

The concept of protecting traditional knowledge as described by Duffield above, is in line with the protection model developed by the World of Intellectual Property Rights (WIPO). WIPO generally proposes two protection models, namely:

1) Preventive protection (*defensive protection*)

In the context of traditional knowledge, the term defensive protection refers to efforts aimed at preventing the granting of intellectual property rights to traditional knowledge or genetic resources related to traditional knowledge by other parties without the knowledge and permission of the traditional knowledge owner. Defensive protection itself consists of two aspects:

- a. legal aspect, is how to ensure the limitations of criteria related to prior art for traditional knowledge, for example, by ensuring in law that oral disclosure of traditional knowledge or information constitutes prior art; And
- b. The practical aspect is how to ensure traditional knowledge is available and open to be accessed and can be read by authorities and/or patent officers

2) Positive protection (positive protection)

Defensive protection can be an effective policy to prevent the granting of intellectual property rights to unauthorized parties. However, this does not automatically stop misappropriation/biopiracy of traditional knowledge. National law is needed to support the implementation of this policy. However, positive law is the main mechanism in efforts to achieve protection and benefit sharing for traditional knowledge owners. Positive protection itself can be carried out in two forms of legal action, namely by making the use of laws related to intellectual property rights more effective, or through the establishment of special laws related to traditional knowledge (*sui generis law*).

## **CLOSURE**

### **Conclusion**

Every ethnic group in Indonesia is believed to inherit communal intellectual property which is created based on human interaction with the natural environment in order to provide a way out of life's problems. This traditional knowledge is then manifested as a form of communal intellectual property in the perspective of the intellectual property rights legal regime. The government through the Ministry of Law and Human Rights, especially the Directorate General of Intellectual Property Rights, needs to immediately carry out intensive discussions on the Draft Law on the Protection of Traditional Knowledge and Traditional Culture Express. Efforts to overcome the challenges faced by the Government in providing intellectual property protection for traditional knowledge and traditional cultural expressions are carried out by the Government through the Ministry of Law and Human Rights, especially the Directorate General of Intellectual Property Rights, including, among other things, conducting open and continuous outreach and/or campaigns regarding knowledge understanding, traditional and traditional cultural expressions.

### **Suggestion**

Based on the study of the concept of "communal" in Customary Law, ownership of traditional cultural expressions, traditional knowledge, geographical indications and genetic resources has an inherent communal nature.

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