

TRADITIONAL KNOWLEDGE IN THE PHILIPPINES

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Abstract: This knowledge does not need to be explainable within the philosophical framework of modern science. However, what is important is the community's recognition that this knowledge helps to maintain and improve their health for the sake of social continuity and relationships between them which are based on their own culture, history, heritage and awareness. With this limitation, the meaning of traditional medicine is also very broad because it is very depends, on the recognition of indigenous people as owners. A study cannot be said to be research if it does not have a research method. The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively. The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data. In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach. Discussions regarding the protection of IPR in developing countries have not succeeded in taking into account cultural differences that influence the understanding of "property", or what belongs to individuals. It is also important to link IPR law with the socio-cultural realities of the people of developing countries as a more effective approach to ensuring the enforcement of IPR law in developing countries.

Keywords: Knowledge, Traditional, Filipino

Introduction

This knowledge does not need to be explainable within the philosophical framework of modern science. However, what is important is the community's recognition that this knowledge helps to maintain and improve their health for the sake of social continuity and relationships between them based on their own culture, history, heritage and awareness (Pasal 4 Traditional medicine). With this limitation, the definition of traditional medicine is also very broad because it is very dependent on the recognition of the native community as its owner. Owners of Traditional knowledge are Indigenous Cultural Communities and Indigenous People (ICCs/IPs). Article 3 (h), IPRA, 1997, provides an understanding of ICCs/Ips, namely a homogeneous group of people or communities that have characteristics; (*Republic Act No.8371*)

- 1) Identifying oneself as a native community and gaining recognition from other parties;
- 2) Continuously remaining as a society organized in a certain area and communally having certain ties;
- 3) Has an area that has been occupied, used and exploited since time immemorial;
- 4) Bonded together by different languages, customs, traditions and cultural heritage or people who are historically different from the majority of Filipinos.

Even though the owner of Traditional knowledge is a community, the nature of ownership is private. This means that with this nature of ownership, ICCs/IPs have a number of fairly broad

normative rights and authority over the ownership of this knowledge. Based on IPRA, 1997, in general the normative authority rights of the ICCs/Ips are as follows.

- a) The right to practice and revitalize their own cultural traditions and customs (the right to practice and revitalize their own cultural traditions and customs) section 32)
- b) The right to the return of ownership of spiritual, intellectual religious and cultural objects which have been taken by force and without prior permission or in violation of the law, traditions and customs (the right to the restitution of cultural, intellectual religious and spiritual property taken without their free and prior informed consent or in violation of their law, traditions and customs) (section 32)
- c) The right to special measures to control, develop and protect their sciences, technologies and cultural manifestations (the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations) (section 34).

Literature Review

The Philippines is the first country to regulate the protection of indigenous people's rights through special laws. Protection of the rights of indigenous people is a mandate of this country's constitution. Therefore, everything related to the protection of people's rights is regulated in a separate law contained in "Republic Act" No. 8371 which is known as "The Indigenous People's Rights Act IPRA", 1997 (Indigenous People's Rights Act). One of the rights protected in this law is the right of indigenous people to their knowledge.

Apart from that, traditional knowledge, especially medicinal knowledge, is also regulated in a separate law, namely in "Republic Art" No. 8423 which is called the "Traditional and Alternative Medicine Act- TAMA", 1997 (Traditional and Alternative Medicine Act). Below we discuss the elements of the traditional knowledge ownership system adopted by this country with reference to the two provisions above.

Method

A study cannot be said to be research if it does not have a research method (Koto & Faisal 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto & Zainuddin 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

Traditional Knowledge in the Philippines

In general, the main objective of establishing the Law on the Rights of Indigenous Peoples is to provide recognition, protection and advancement of the rights of Indigenous Cultural Communities and Indigenous People (ICCS/Ips) in the Philippines. In order to achieve this main goal, in the field of Traditional knowledge, a system of protecting community intellectual rights was established which provides innovative contributions to both local communities and indigenous cultural communities in terms of development and conservation of genetic resources and biodiversity.¹

¹ Tujuan utama ini dapat dilihat pada Pasal 2 (c) yang menyatakan "*The State shall recognize, respect and protect the rights of ICCS/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies*". Adapun sistem perlindungan intelektual komunitas diatur

The scope of subjects included in the community intellectual rights protection system is quite broad. There are several subjects included in the system, namely.²

- 1) Knowledge, technology and cultural manifestations including genetic and human resources,
- 2) Seeds include derivatives of these resources,
- 3) Medicines and traditional healing practices of vital medicinal plants,
- 4) Animals and minerals,
- 5) Indigenous knowledge systems and practices,
- 6) Knowledge of flora and fauna,
- 7) Lian traditions, literature, design and
- 8) Performing and visual arts.

From the scope above, it can be seen that medicinal knowledge and traditional healing practices are explicitly stated as subjects included in the community intellectual rights protection system. The Traditional and Alternative Medicine Law (TAMA), 1997, provides the definition that what is meant by traditional medicine is the total sum of knowledge, skills and practices regarding health maintenance.

However, there are at least two restrictions on the ownership rights of ICCs/Ips. This is in accordance with the ownership held by indigenous communities as regulated in article 5, IPRA, 1997. These restrictions are first, as part of the "ancestral domain" ownership of traditional knowledge must be enshrined to strengthen cultural integrity. Second, as a community of property, traditional knowledge belongs to all generations and therefore cannot be sold, disposed of or destroyed. Therefore, ownership rights to traditional knowledge are the same as rights to other international resources, namely they must be sustainable.³

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Recognition of these rights is contained in the articles regarding the Declaration of State Policy which states as follows. (Republic Act" No.8371)

- 1) *"The State shall recognize, respect and protect the rights of ICCS/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies";*
- 2) *"The State shall take measures, with the participation of the ICCS/ IP's concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that*

dalam Pasal 34 tentang *Right to Indigenous Knowledge System and Practices*. Lebih jauh lihat, *Indigenous Peoples Rights Act - IPRA*", 1997.

² Ruang lingkup subjek ini dapat dilihat pada Pasal 34 yang menyatakan protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and hearth practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts". Lihat Republic Act No.8371, Ibid.

³ Konsep kepemilikan ini diatur dalam Pasal 5 yang menyatakan "Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed.." Ibid..

members of the ICCS/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population”

From the description above, it can be seen that the Philippines has established a system of protecting community intellectual rights in a special law. In this system, it is determined that the owner of traditional knowledge is the local community and ownership is private. There are a number of things obtained by ICCs/IPs as owners of knowledge and these rights arise from state knowledge and will be regulated further through more specific provisions.

Conclusion

This knowledge does not need to be explainable within the philosophical framework of modern science. However, what is important is the community's recognition that this knowledge helps to maintain and improve their health for the sake of social continuity and relationships between them which are based on their own culture, history, heritage and awareness. With this limitation, the meaning of traditional medicine is also very broad because it is very depends, on the recognition of indigenous people as owners. Discussions regarding the protection of IPR in developing countries have not succeeded in taking into account cultural differences that influence the understanding of "property", or what belongs to individuals. It is also important to link IPR law with the socio-cultural realities of the people of developing countries as a more effective approach to ensuring the enforcement of IPR law in developing countries.

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- Pasal 4 (b). *"Traditional medicine"- the sum total of knowledge, skills, and practice on health care, not necessarily explicable in the context of modern scientific philosophical framework, but recognized by the people to help maintain and improce their health towards the wholeness of their being, the community an society and their interrelations based on culture, history, heritage, and consciousness" Lahat Republic Act" No. 8423), 1997.*
- Pengertian tentang ICCS/IPPs dirumuskan sebagai berikut *"a group of people or homogenous societies identified by self-ascription and ascription by others who have continuously Irved as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial occupied, possessed and utilized such territories, sharing common bonds of language customs, traditions and other distinctive cultural traits, or who have become Instorically differentiated from the majority of Filipinos. Lebih jauh lihat Pasal 3 (h), Republic Act No.8371, Ibid.*

Tujuan utama ini dapat dilihat pada Pasal 2 (c) yang menyatakan *"The State shall recognize, respect and protect the rights of ICCS/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies"*. Adapun sistem perlindungan intelektual komunitas diatur dalam Pasal 34 tentang *Right to Indigenous Knowledge System and Practices*. Lebih jauh lihat, *Indigenous Peoples Rights Act - IPRA*", 1997.

Ruang lingkup subjek ini dapat dilihat pada Pasal 34 yang menyatakan *protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and hearth practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts"*. Lihat Republic Act No.8371, Ibid.

Konsep kepemilikan ini diatur dalam Pasal 5 yang menyatakan *"Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed.."* Ibid..