

## OPTIMIZING THE PROTECTION OF TRADITIONAL KNOWLEDGE IN THE WEST SUMATRA COMMUNITY

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**Abstract:** *The principles of knowledge of traditional elements are legally based through the 1945 Constitution of the Republic of Indonesia, which in Article 32 paragraph (1) states that "The state advances Indonesian national culture amidst world civilization by guaranteeing the freedom of society to maintain and develop its cultural values". Based on all the descriptions that have been explained, the following conclusions can be drawn: (1) Regulations on the protection of traditional knowledge in various legal regulations/provisions in Indonesia can be traced in several legal products as follows, namely: the UN Convention on Biodiversity Law, the Nagoya Protocol Ratification Law, the 1945 Constitution of the Republic of Indonesia, the Cultural Advancement Law, the Patent Law, the Copyright Law, the PP KIK, and the DKIK Minister of Law and Human Rights Regulation. However, the many provisions regarding traditional knowledge that have been regulated only give the impression of being maximal, not optimal. The procedure for providing legal protection for traditional knowledge in improving the welfare of communal communities, the steps are as follows: inventory, security, guarding, maintenance, rescue and publication. Optimization so that traditional knowledge can improve the welfare of communal communities, namely the need for legal norms that regulate the provision of royalties/economic rights to communal communities from the results of commercial utilization of KIK including in the form of traditional knowledge. The burden is imposed on both individuals, corporations/legal entities, and foreign parties. In addition to the legal norms, it must also regulate the establishment of a Special Non-Governmental Institution that accommodates, manages, distributes and records data related to Communal Intellectual Property. This institution will later actively go directly to the regions to directly record traditional knowledge that has not been recorded and distribute benefits of economic value to entitled (registered) communal communities.*

**Keywords:** *Optimization, Traditional Knowledge, West Sumatra.*

### Introduction

Indonesia is a country that has abundant genetic resources, multi-ethnic, and diverse cultures. Such conditions make Indonesia rich in traditional knowledge originating from various ethnic groups in Indonesia. Traditional knowledge is part of culture. Traditional knowledge in a broad sense includes a large part of the knowledge and practices that are passed down from one generation to the next.

As a country with an abundance of traditions and cultures, Indonesia is a stage for various ethnic groups who preserve their traditional knowledge. This knowledge is not only a cultural heritage, but also the foundation of daily life that affects various aspects, including but not limited to medicine, agriculture, hunting, fishing, art, music, and various other things. This diversity not only reflects cultural identity, but also reflects the local wisdom of the nation that has been obtained and passed on by generations.

In the Indonesian constitution, namely the 1945 Constitution (UUD) in Article 32, it states that the Government advances the Indonesian National culture, in the explanation of the Article it is also explained in the UUD that: "National culture is a culture that arises as a result of the efforts of the entire Indonesian people. Old and original cultures that exist as the peaks of culture in regions throughout Indonesia are counted as national culture. Cultural efforts must be directed towards the advancement of manners, culture, unity, without rejecting new materials from foreign cultures that can develop or enrich the nation's own culture, and increase the degree of humanity of the Indonesian nation."

In the explanation of Article 32 of the Constitution above, it is stated that the nation's culture arose due to the efforts of the people, the nation's culture has also existed for a long time, born from ancestors in regions throughout Indonesia, the nation's culture does not close itself off or even reject foreign cultural materials because of its flexible nature as long as it can develop and increase the level of the nation's culture itself. The mandate of the Constitution in Article 32 of the Constitution clearly shows that Indonesia is a country whose national culture is closely linked to the lives of the people. Furthermore, recognition of the importance of protecting traditional knowledge in Indonesia is increasingly strengthened by the declaration of cultural identity and the rights of indigenous peoples as constitutional rights through the second amendment to the 1945 Constitution in 2000 in Article 18 B paragraph (2) of the 1945 Constitution, which states that the State recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

The principles of knowledge regarding traditional elements are legally based through the 1945 Constitution of the Republic of Indonesia, which in Article 32 paragraph (1) states that "the state advances Indonesian national culture amidst world civilization by guaranteeing the freedom of society to maintain and develop its cultural values". This provision is clearly a form of commitment shown by the state in protecting traditional knowledge as an inseparable part of the cultural and constitutional identity of society.<sup>1</sup> This provision can also be interpreted to mean that Indonesia has a responsibility to prioritize all of Indonesia's cultural potential that is developing in the midst of global civilization.<sup>2</sup> However, the principle of protecting traditional knowledge as contained in Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia has not been further regulated by law which specifically provides legal protection for traditional knowledge.

In the perspective of society, it is still unfamiliar with the term traditional knowledge in its definition, in terms of language it is not easy to understand, but if it has been interpreted what is called traditional knowledge, then in fact traditional knowledge is already present and alive in society. Some terms in the literature that study traditional knowledge include local knowledge, indigenous community knowledge and traditional knowledge itself. However, these three terms essentially have the same principle that focuses on knowledge that has been known for a long time in a particular community in a country.<sup>3</sup>

This traditional knowledge is then maintained from generation to generation from ancestors to the next generation. The Indonesian government is very aware of the high interest of

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<sup>1</sup> Aprianti, Muthia, Dinie Anggraeni Dewi, and Yayang Furi Furnamasari. "Kebudayaan Indonesia di Era Globalisasi terhadap Identitas Nasional Indonesia." *Edumaspul: Jurnal Pendidikan* 6.1 (2022): 996-998.

<sup>2</sup> Arifin, Hafidz Putra. "Politik Hukum Perlindungan Cagar Budaya di Indonesia." *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi* 10.1 (2018): 65-76

<sup>3</sup> Gazalba Saleh, "Upaya Perlindungan Hukum Bagi Pengetahuan Tradisional Di Negara-Negara Berkembang Khususnya Indonesia" *Supremasi Hukum, Jurnal Supremasi Hukum* Vol 3 No. 1, (2010) hlm. 2.

Indonesia in the issue of traditional knowledge. Protection of traditional knowledge is a step that must be taken by the government by making special regulations and implementing regulations.

## Literature Review

### 1. Optimization

The process of making something the best or the best in a particular context, can be an activity, process, or solution. In other words, optimization is an effort to maximize something to achieve the most profitable or most effective results. In this study, what will be optimized is the protection of traditional knowledge, especially in the West Sumatra community.

### 2. Traditional Knowledge

Traditional knowledge in a national legal dictionary is traditional knowledge possessed by regional communities or traditions that are passed down from generation to generation, which include the fields of art, plants, architecture, and so on.<sup>4</sup> Traditional knowledge is a general term that includes creative expressions, information, etc. that can be specifically seen to have their own characteristics and can identify social units. Traditional knowledge includes methods of cultivating and processing plants (agriculture), treatment, medicines, food and drink recipes, arts and so on. Henry Sulisty, quoted by Muhammad Djumhana, also defines traditional knowledge as knowledge whose status and usefulness or use are part of the dark cultural traditions of society.<sup>5</sup>

## Method

Normative legal research also refers to legal rules. Research data is in the form of data from legal materials used through legal material searches or literature studies of primary, secondary and tertiary legal materials.<sup>6</sup> This research explores the laws that exist in written form or community traditions.<sup>7</sup> 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.<sup>8</sup> In qualitative research, the process of obtaining data in accordance with the research objectives or problems is studied in depth and with a holistic approach.<sup>9</sup>

## Result and Discussion

### 1. Urgency of Legal Protection Regulations for Traditional Knowledge in Legislation in Indonesia

Since the Convention on Biological Diversity, various international meetings, especially within the WIPO framework, have been intensively held to discuss a suitable protection system for traditional knowledge. Based on the definition of WIPO, Traditional Knowledge refers to knowledge that is purely developed in and from indigenous or traditional communities as a result of intellectual creativity, experience, culture, spiritual means, or insight in a traditional context, related to the environment, including knowledge, skills, innovation, practice, teaching, or

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<sup>4</sup> M. Marwan dan Jimmy P., *Kamus Hukum*, (Surabaya: Reality Publisher, 2009), hlm. 613

<sup>5</sup> Muhammad Djumhana, *Perkembangan Doktrin dan Teori Perlindungan Hak Kekayaan Intelektual*, (Bandung: Citra Aditya Bakti, 2006), hlm. 14.

<sup>6</sup> Ida Hanifah and Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19," *Jurnal Yuridis* 8, no. 1 (2021): 23.

<sup>7</sup> Faisal, *Akibat Hukum Wanprestasi Dalam Jual Beli Tiket Konser Coldplay Secara Online*, *UNES Law Review*, 6 no. 3, Tahun 2024, 9182.

<sup>8</sup> Zainuddin and Rahmat Ramadhani, "The Legal Force Of Electronic Signaturesin Online Mortgage Registration," *Jurnal Penelitian Hukum De Jure* 21, no. 2 (2021): 244.

<sup>9</sup> Rahimah and Ismail Koto, "Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes," *IJRS:International Journal Reglement & Society* 3, no. 2 (2022): 129–33.

learning. As the World Intellectual Property Organization, WIPO continues to focus on developing a protection system for traditional knowledge that is made in-depth and unique (*sui generis*).

Not only that, the increasing need for regulations related to the legal protection of traditional knowledge has been realized by Indonesia with the ratification of Law Number 11 of 2013 concerning the Ratification of the "Nagoya Protocol on Access to Genetic Resources and The Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity" which on October 29, 2010 was adopted in Nagoya. This is a form of seriousness from several countries in the world (including Indonesia) to pay attention to the existence of traditional knowledge. Traditional Knowledge which is truly a part of the traditions and culture of society can actually be found in various provisions of Indonesian legislation. Implicitly, provisions related to traditional knowledge are contained in Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "The state supports the progress of Indonesian national culture amidst world civilization by providing guarantees for the freedom of society to maintain and develop its cultural values." Thus, it is clear that through the 1945 Constitution, the state protects traditional knowledge to realize progress from the cultural and constitutional identification marks of its society.

Based on Article 5 of Law Number 5 of 2017 concerning Cultural Advancement, "traditional knowledge is part of the Object of Cultural Advancement and is used as an effort to increase cultural resilience and the contribution of Indonesian culture in the midst of world civilization through the protection, development, utilization, and fostering of culture". Meanwhile, in Law Number 13 of 2016 concerning Patents (Patent Law), there are also provisions regarding traditional knowledge in Article 26 paragraph (1) which states that "if the invention is related to and/or genetic resources and/or traditional knowledge, it must clearly and correctly state the origin of the genetic resources and/or traditional knowledge in the description". In this regard, traditional knowledge that can be patented must meet the criteria of an invention with an element of novelty, and contain preventive measures that can be implemented in an industry. The many regulations that touch on traditional knowledge as described above and in other regulations, do not cover the fact that regulations that are truly concrete and focused on protecting Traditional Knowledge itself are still not enough. For example, in Law Number 28 of 2014 concerning Copyright (UUHC), which only discusses traditional cultural expressions which are a form of traditional knowledge, so that traditional knowledge itself is not regulated. In this Law, the regulation regarding traditional cultural expressions is regulated in Article 38, that "The State is obliged to inventory, maintain, and preserve traditional cultural expressions as referred to in paragraph (1)".

Regarding the regulation of traditional cultural expressions as a component of traditional knowledge heritage in the UUHC, this is actually also contrary to the concept and conditions for protection of the UUHC because in traditional cultural expressions, ownership of creations is communal while ownership of copyright is individual.<sup>10</sup> In addition, the requirement that in copyright, the creator must be clearly known, while in traditional cultural expressions often the creator of a work cannot be identified as a consequence of hereditary inheritance.<sup>11</sup> This clearly indicates that neither the rules on traditional knowledge nor traditional cultural expressions are appropriate if they are included in the UUHC.

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<sup>10</sup> Rongiyati, Sulasi. "Hak Kekayaan Intelektual Atas Pengetahuan Tradisional." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 2.2 (2016): 213-238.

<sup>11</sup> Adelia, Nisa. "Pustakawan dan pengetahuan tradisional: studi tentang urgensi dan peran pustakawan dalam pengetahuan tradisional." *Record and Library Journal* 2.1 (2016): 51-57.

UUHC itself has derivative regulations in the form of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property. In this Government Regulation (PP), several things related to Traditional Knowledge have been regulated, such as in Article 8 which states that "Traditional Knowledge consists of traditional methods or processes; technical skills; skills; learning; agricultural knowledge; technical knowledge; ecological knowledge; knowledge related to genetic resources; medical knowledge; traditional medicine and healing procedures; economic systems; social organization systems; knowledge related to behavior regarding nature and the universe; and/or other forms of knowledge according to developments". This PP also accommodates an explanation regarding the recording of communal intellectual property for inventory purposes. Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Communal Intellectual Property Data in Article 1 Number 3 also regulates that "traditional knowledge is an intellectual work in the field of knowledge and technology that contains elements of traditional heritage characteristics produced, developed, and maintained by a particular community or society". Not only in UUHC, the rules regarding traditional knowledge that are also still inadequate are contained in the Law on the Advancement of Culture because it separates the scope between traditional cultural expressions that include traditions, manuscripts, traditional technology, customs, oral, rituals with traditional knowledge that includes clothing, herbal medicine, methods or ways of maintaining health, crafts, traditional food and drinks, knowledge and behavioral habits related to nature and the universe. This separation causes the scope of traditional knowledge to be very limited.

Traditional knowledge is basically a component of Intellectual Property that should allow its creators to benefit from their creations. The main concept of intellectual property is to reward human creativity and effort that gives rise to technology and creative culture for the benefit and enjoyment of all mankind. Traditional knowledge contributes greatly to the creation of intellectual works that are hereditary and traditional. Moreover, traditional knowledge is the result of tradition and is often a source of knowledge to help human survival. Traditional knowledge cannot be separated from society because all the results of knowledge that emerge, grow, and develop are the experiences and practical learning of the indigenous people themselves to survive (way of life).

Unfortunately, various traditional knowledge products spread throughout Indonesia are often exploited by other countries without respecting the rights of the communal community as creators. For example, in the case of the claim of traditional Indonesian knowledge products such as the typical West Sumatran cuisine *rendang*, the song from Ambon *Rasa Sayange*, and the dance from East Java *Reog Ponorogo* which were claimed by Malaysia. The results of the claim of traditional knowledge products belonging to the Indonesian people without rights resulted in misuse or often referred to as misappropriation and biopiracy which are very detrimental. Misappropriation is defined as an act that harms another party by ignoring all rights held by the local community over the results of their traditional knowledge creations as the injured party,

The real issue that needs more attention is related to the protection of traditional knowledge itself. Until now, traditional knowledge has not stood under its own law like other intellectual property. It can be seen that patents, brands, plant varieties, geographical indications, copyrights, and integrated circuit layout designs have been sheltered under their own regulations (*sui generis*). As explained in the previous discussion, traditional knowledge is regulated in a variety of interrelated legal provisions, such as the UUHC, the Patent Law, the Cultural Advancement Law, or the PP KIK. The breadth of the regulation of traditional knowledge causes overlap and is not systematic or focused, so that indigenous peoples themselves in the process of understanding or protecting their traditional knowledge, have the potential to experience confusion and disinterest in registering their creations.

## 2. Optimizing the Protection of Traditional Knowledge in the West Sumatran Community

West Sumatra Province has several regencies/cities, one of which is the Mentawai Islands Regency. The Mentawai Islands are a group of islands that are geographically located in the Indian Ocean and administratively part of the West Sumatra Province of Indonesia. This regency is located on the west side, outside the Sumatra Island region, which consists of four main islands, namely Siberut Island, Sipora Island, North Pagai Island and South Pagai Island, in addition there are several small islands. The Mentawai Islands Regency was formed based on Law of the Republic of Indonesia No. 49 of 1999 and named after its original geographical name. The indigenous people of Mentawai have a different culture from the Minangkabau people because they are separated by the Sea.

In this discussion, the researcher wants to discuss the provision of legal protection for communal intellectual property related to traditional knowledge, which is currently considered lacking in terms of obtaining legal protection, related to communal intellectual property and its derivatives in this case traditional knowledge, the author has conducted a mini reset on one of the traditional knowledge which is in fact part of the communal intellectual property in West Sumatra, namely rendang.

Legal protection for traditional cultural expressions is greatly needed by developing countries, because protection is seen as a measure taken to ensure the survival of intangible cultural heritage and communal creativity.<sup>12</sup> There are two things that can be done to provide legal protection for traditional knowledge:

- a. For short term protection with inventory system or documentation of existing traditional knowledge, this not only provides informative function but can also be used as legal evidence function. Documentation can be done by means of photos, writing or special notes made by the government;
- b. For medium and long term by issuing regulations that specifically protect traditional knowledge. One way to fight for national interests at international level is to create national legislation that also regulates international issues.

Legal protection is something that protects legal subjects through applicable laws and regulations and enforces its implementation with sanctions. One of the characteristics and at the same time the purpose of law is to provide protection (protection) to the community. Therefore, legal protection for the community must be realized in the form of legal certainty. Providing protection for traditional knowledge becomes important when faced with the characteristics and uniqueness it has. There are several reasons for the need to develop protection for traditional knowledge, including considerations of justice, conservation, maintenance of culture and traditional practices, prevention of confiscation by unauthorized parties of components of traditional knowledge and development of the use of traditional knowledge interests. Protection of traditional knowledge plays a positive role in providing support to the community in preserving its traditions.

The protection in question is all forms of efforts to protect PTEBT from use that is carried out without rights and violates propriety. Protection of EBT as part of traditional knowledge is very important, at least for 3 reasons, namely (1) the potential for economic benefits resulting from the use of traditional knowledge, (2) justice in the world trade system, and (3) the need to protect the rights of local communities.<sup>13</sup>

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<sup>12</sup> OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Right)*, (Jakarta: PT RajaGrafindo Persada, 2006), hlm.78.

<sup>13</sup> Agus Sardjono, *Hak Kekayaan Intelektual dan Pengetahuan Tradisional*, (Bandung: Alumni, 2006, hlm. 2-3.

Efforts to protect traditional arts or traditional cultural expressions can also be done by publishing the culture as widely as possible. The Indonesian government through Law No. 5 of 2017 has provided protection for traditional cultural expressions which is done by creating a separate wealth database. Later it will be broadcasted to the internet so that everyone knows (traditional arts) originate from Indonesia, who the maestros are, who the experts are, who the teachers are who can be visited if they want to learn, that's how to protect it.

The law on cultural advancement can protect the nation's intellectual property more comprehensively. Law No. 5 of 2017 also provides protection for traditional knowledge and traditional cultural expressions such as art, customs, folk games and traditional sports (Article 5). Protection is carried out by means of inventorying cultural advancement objects through an integrated cultural data system, security (Article 22), maintenance (Article 24), rescue (Article 26), publication (Article 28) and development (Article 30). In Article 16 paragraph (4) of Law No. 5 of 2017 concerning Cultural Advancement, the Inventory of Cultural Advancement Objects consists of the following stages: 1) recording and documentation; 2) determination; 3) data updating. Securing Cultural Advancement Objects is carried out by means of: 1) updating data in the Data System; 2) Integrated Culture continuously; 3) inheriting the Object. Advancement of Culture to the next generation; 4) fighting for the Object of Advancement of Culture as a world cultural heritage (Article 22 paragraph 4). Maintenance of Object of Advancement of Culture is carried out by: 1) maintaining the noble value and wisdom of the Object; 2) Advancement of Culture; 3) using Object of Advancement of Culture in daily life; 4) maintaining the diversity of Object of Advancement of Culture; 5) reviving and maintaining the Cultural ecosystem for each Object of Advancement of Culture; and 6) passing on Object of Advancement of Culture to the next generation (Article 24 paragraph 4).

Article 38 paragraph (4) of Law No. 28 of 2014 concerning Copyright, it is emphasized that further provisions regarding copyright held by the state will be regulated by Government Regulation. Meanwhile, on the initiative of the Regional Representative Council, the formation of a Draft Law on the Protection and Utilization of Intellectual Property, Traditional Knowledge, and Traditional Cultural Expressions is currently being discussed. The characteristics of copyright are originality in creating a work of creation. The work must be produced by a person who acknowledges it as his creation. The work may not be copied or reproduced from another work. If the creator has applied a high enough level of knowledge, expertise, and judgment in the process of creating his work, this is considered to have fulfilled the nature of originality in order to obtain copyright protection.

Many traditional works are created by traditional societies as a group, meaning that many people contribute to the final product. Much traditional knowledge is often discovered by chance. Moreover, traditional works and knowledge can also be developed by different people over a long period of time (perhaps over several centuries). Even more importantly, many traditional societies do not recognize the concept of the individual, property functions socially and is owned by the public. Thus, creators in traditional societies do not intend or want to prioritize individual rights or ownership rights over their works.

## **Conclusion**

Based on all the descriptions that have been explained, the following conclusions can be drawn: (1) The regulation of protection of traditional knowledge in various regulations/legal provisions in Indonesia can be traced in several legal products as follows, namely: the UN Convention on Biodiversity Law, the Nagoya Protocol Ratification Law, the 1945 Constitution of the Republic of Indonesia, the Law on the Advancement of Culture, the Patent Law, the Copyright Law, PP KIK, and the DKIK Minister of Law and Human Rights Regulation. However, the many

provisions regarding traditional knowledge that have been regulated only give the impression of being maximal, not optimal. The procedure for providing legal protection for traditional knowledge in improving the welfare of communal communities, the steps are as follows: inventory, security, guarding, maintenance, rescue and publication.

Optimization so that traditional knowledge can improve the welfare of communal communities, namely the need for legal norms that regulate the provision of royalties/economic rights to communal communities from the results of commercial utilization of KIK including in the form of traditional knowledge. The burden is imposed on both individuals, corporations/legal entities, and foreign parties. In addition to the legal norms, it must also regulate the establishment of a Special Non-Governmental Institution that accommodates, manages, distributes and records related to Communal Intellectual Property. This institution will later actively go directly to the regions to directly record traditional knowledge that has not been recorded and distribute economic benefits to entitled (registered) communal communities.

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