

# Legal Politics of Communal Intellectual Property Rights Protection in Indigenous Communities

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**Abstract.** Communal Intellectual Property emerged as a form of respect for the original culture of the Indonesian people, as a country rich in traditional culture. Problems arise when the rampant theft and claims to traditional Indonesian culture, then the regulation related to Intellectual Property still tends to protect individual rights rather than communal and in the aspect of regional regulations (Perda) not all regions already have regulations governing Communal IP. This research is conducted through a normative juridical approach, the results of this study are Communal IP arrangements are regulated in various regulations such as, UUHC, Trademark Law and Geographical Indications, Plant Variety Law, and Industrial Property Rights. PP Communal IP and Regional Regulation (Perda). This is an effort for more comprehensive protection. However, when viewed based on the political aspect of law, it is still necessary to improve the current regulations and optimize regional authority in protection efforts through regional regulations that are evenly distributed in each region.

**Keywords:** Legal Politics, Communal Intellectual Property, Indigenous People

## 1 Introduction

Indonesia has a diversity of tribes and cultures, this makes there a great potential for usefulness in implementing cultural protection and preservation, especially in Communal Intellectual Property Rights, hereinafter commonly referred to as KIK. In essence, a human being comes to the world in different abilities and conditions. Every human being, in the course of his life, has differences in the potential expertise he has. Although, between humans and others have the same expertise in something, namely both can create a logo, some people can indeed have the same competence in something, but the output produced may have differences, both in aesthetics and the character of each logo. Intellectual Property Rights are rights granted specifically by the State in ensuring the protection of a work that comes from a person's thoughts, and work, the right to an asset,[1] resulting from the ability to think, innovate, creatively so as to create intellectual work.

In the context of Intellectual Property Law (IPR), legal protection or exclusive rights are given to creators, rights holders, and or those legally granted rights. While the manifestation of

the ownership of these rights can be seen in the form of objects tangible (material objects). In the context of rights ownership, there are two types of ownership, namely those that are individual or private and those that have a communal or public nature. Intellectual Property Rights or commonly referred to as KIK, includes various forms of intellectual property that are communal in nature, consisting of Traditional Knowledge (PT), Genetic Resources (SDG), Indications of Origin (IA), Potential Geographical Indications (PIG) and most often found is Traditional Cultural Expressions (EBT). The application of protection to communal intellectual property rights certainly departs from the thought that it aims to protect not only the assets of the community of its bearers, but as an asset of the cultural heritage of a nation. This is essential for the cultural diversity in Indonesia, because it is not uncommon for cultural heritage assets to be claimed by other countries, such as batik which was claimed by Malaysia in 2008.

However, although the value and importance of intellectual property is very fundamental and essential for the country's cultural wealth, legal protection of communal intellectual property is often still not optimal, the governing law and national policies still tend to focus on intellectual property that is individual or corporate in nature, and do not sufficiently accommodate the characteristics and challenges associated with Communal Intellectual Property, and not all regions in Indonesia have regional regulations governing it.

## **2 Method**

This study adopts a descriptive research approach utilizing normative juridical research methods. It involves the examination of library resources or secondary data, comprising primary legal materials such as laws and regulations, as well as secondary legal materials like books, journals, and other scholarly research publications.

## **3 Result and Discussion**

### **3.1 Legal Politics of Communal Property Rights Protection in Indigenous Communities**

According to Prof. Mahfud MD, legal politics is an official legal policy related to laws that will be enacted both by making new laws and replacing old laws to achieve a goal in the future. Intellectual Property Rights, hereinafter referred to as IPR, is an exclusive right that is given for the ability to create, make, produce an intellectual work that has value, both economically, namely getting a profit from his intellectual work, and morally getting appreciation and pride for the creation he made. Intellectual property based on its ownership is divided into two, namely individual and communal. Individual intellectual property is a creation owned by a person, or a legal entity, while communal is based on togetherness in a community that exists in the same area, communal ownership means that intellectual property is not given to individuals. Every culture originating from Indonesia is a Communal Intellectual Property. Regarding communal intellectual property, it refers to intellectual property owned collectively by the public and characterized by its communal nature.[2] Communal rights, distinct from individual rights, entail state protection for ownership.

According to Ishar Helmi, the protection of intellectual property rights is based on the economic protection of the creator of the work, while the community enjoys and develops the creation obtained from the thought[1] Intellectual property is an individual right that gets

protection based on the constitution. The purpose of the protection of intellectual property (IP) is to protect, dignity, interests and respect for human rights owned by legal entities or individuals. The aspect of IP protection is closely related to human rights, therefore laws and regulations must be able to accommodate such protection. protection of IP is a manifestation of the enforcement of human rights itself.

If reviewed in positive law, the regulation of IP is generally regulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). This is an international standardization that sets minimum standards for the protection and enforcement of Intellectual Property Law, which in its implementation has been ratified by several countries in the world, including Indonesia. With the enactment of TRIPs in Indonesia, the legal protection of IP can be strengthened and become more comprehensive. The purpose of ratifying TRIPs is to protect intellectual property Indonesia is a country with abundant ethnic and cultural diversity. In Java Island, which is the most populous island in Indonesia, there are four tribes, for example Betawi, Sundanese, Javanese, and Baduy. Each of these tribes has different characteristics and traditional cultures. With a very diverse indigenous community, this has the potential to create intellectual works based on traditional culture and generally these works are utilized together (communal). The creation of traditional intellectual property works is generally only for customary activities that are internal to a tribe without giving importance to the economic aspects of it. Even though the KIK has a unique nuance and has high economic value. Therefore, it is necessary for the government to play a role in the implementation of utilizing and providing protection for KIK.[1]

Indonesia is rich in a variety of geographical conditions, diverse customs and rich traditional culture. Varieties in culture, geography and traditional cultural knowledge and expression create a distinct identity and uniqueness for Indonesia. Efforts have been made to provide protection, ensure continuity and elevate this traditional culture into a very valuable treasure for the Indonesian nation. The sustainability of this heritage is important in maintaining and promoting the identity and wealth of a nation. However, in reality in Indonesia there are problems related to people's perceptions of cultural diversity.

There are traditional cultural expressions and traditional knowledge that are often only seen as relics of the ancestors and are very old without having considerable benefits if they are preserved. Cultural expressions and traditional knowledge can basically be a source of wealth and knowledge for the community, but often this potential is not optimally utilized. Nevertheless, the initiation of a perspective on the importance of cultural expressions and traditional knowledge as national wealth needs to be preserved and developed.

Intellectual Property (IP) has an important role in improving the country's economy, Indonesia, which has a diversity of regional cultures and traditions, is an advantage that if it can be utilized properly, the country's economic level will increase. In this case, it will have an impact on the welfare of the community, especially regional communities who can utilize traditional culture into something that can have good economic value. By maximizing the potential of cultural expressions and traditional knowledge in the use of Communal Intellectual Property, Indonesia can create a competitive advantage in the global market in the aspect of culture and tourism.

The form of Intellectual Property ownership consists of two categories, namely individual or individual or communal ownership. Communal Intellectual Property, hereinafter referred to as KIK, includes various forms of IP, namely:

1. Geographical Indications

Geographical Indications have a function to show the connection between the quality, characteristics or reputation of goods and their region of origin. In

contemporary society, there is an idea of agglomeration of local products related to the concept of competitiveness, so that GIs become the object of public policy studies. Based on Law Number 20 of 2016 concerning Trademarks, it gives a definition as a sign that shows the region of origin or a good and / or product based on geographical environmental factors including human factors, natural conditions or a combination of both factors that provide a unique, quality, on certain goods or products produced.[3]

## 2. Traditional Cultural Expressions

Traditional Cultural Expressions, hereinafter referred to as EBT, have an important value as a 'silent' witness to the history of a community or indigenous people, which slowly and gradually forms a fairly unique picture of the culture and social identity of a community. Basically, community cultural rights are included in basic human rights, the protection of EBT is not only for EBT itself, but is a medium for promoting cultural diversity, respecting and promoting human cultural development. In addition, EBT has economic value that can be utilized as an industry in the field of tourism, such as the Kecak dance from Bali, which is commercialized as one of the tourist destinations if you are visiting Bali. This can have a significant impact on. In addition, it can also introduce and open up opportunities for EBT to be able to compete in the global or world realm. In the UUHC (Law 28/2014), Traditional Cultural Expressions are included in the national culture owned by the State within the scope of Copyright, there are two articles that regulate EBT, namely Article 38 and Article 39 which states[4]:

### Article 38

- (1) The State holds copyright over traditional cultural expressions.
- (2) The State is responsible for cataloging, protecting, and preserving traditional cultural expressions as mentioned in paragraph (1).
- (3) Utilization of traditional cultural expressions as mentioned in paragraph (1) must respect the values embedded within the community of their originators.
- (4) Additional regulations regarding State-held copyright over traditional cultural expressions as mentioned in paragraph (1) will be outlined in Government Regulations.

### Article 39

- (1) If the creator is unknown and the creation has not been disclosed, the State holds the copyright on the creation for the creator's benefit.
- (2) If the creation has been disclosed but the creator is unidentified or only represented by an alias or pseudonym, the party making the disclosure holds the copyright for the creator's benefit.
- (3) If the work has been published but both the creator and the disclosing party are unidentified, the State holds the copyright for the creator's benefit.
- (4) The regulations outlined in paragraphs (1), (2), and (3) do not apply if the creator and/or the disclosing party can establish ownership of the work.
- (5) The Minister is responsible for enforcing the rights of the creator as mentioned in paragraphs (1) and (3).

Regarding the state's rights over EBT as stipulated by this Law, further details are provided in Government Regulation No. 56 of 2022, specifically in Article 3, paragraphs (1), (2), and (3). These paragraphs clarify that the state holds the rights to

EBT, particularly KIK, and it is mandated to inventory, safeguard, and preserve KIK. Such responsibilities are delegated to the Minister/head of non-ministerial government institutions and/or regional governments.

3. Traditional Knowledge (PT) and Genetic Resources (SDG).

Traditional Knowledge is all ideas and/or notions in society, which contain a value originating from the region, as a result of real experience in interacting with the environment, which is developed continuously, and inherited. Genetic Resources hereinafter referred to as SDG are genetic materials derived from plants, animals, or microorganisms that contain units that function as carriers of hereditary traits that have potential value.

According to Soekanto "Society is a form of common life, whose citizens live together for a long period of time, thus producing culture". Indigenous peoples are defined as "A unit of law, a unit of authority and a unit of environment based on the common rights to land and water for all its citizens". From these two definitions of "society" and "indigenous peoples" there are a number of elements that must be justified on the ground (among the indigenous peoples themselves and related parties), namely: a social organization and its members who relate to each other in producing culture, a legal unit of authority, an environment, land and water. This physical reality is de facto possessed by every (indigenous) community, but official recognition of their existence and rights must be authorized by a separate Perda (formal juridical aspect)[5].

Recognition of the existence of indigenous peoples has actually been included in Article 18B paragraph (2) of the 1945 Constitution which states: "The state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principle of a unitary state of the Republic of Indonesia as regulated by law." Then in Article 28I paragraph (3) of the 1945 Constitution it is emphasized that: "The cultural identity and rights of traditional communities shall be respected in harmony with the development of the times and civilization". Therefore, indigenous peoples should be able to enjoy royalties from Communal IPRs from registered Geographical Indications, Traditional Cultural Expressions, Traditional Knowledge (PT) and Genetic Resources (SDG). In addition to legal protection of economic rights and royalties, the results of these economic rights and royalties should also be felt directly by indigenous peoples, for example in the form of special incentives. The form of special incentives that are directly felt by indigenous peoples is a form of full recognition for indigenous peoples.[6]

### **3.2 Efforts to Protect Intellectual Property Law through Communal IP Regulations and PPs**

One example of protection efforts in East Nusa Tenggara (NTT), NTT has diverse and alluring natural resources. One of the region's main attractions is its stunning natural beauty. West Manggarai is surrounded by spectacular natural scenery, including mountains, green valleys, fast-flowing rivers and sparkling beaches. Its diverse ecosystems offer habitats for many unique and rare species of flora and fauna. Another potential natural resource in West Manggarai is in the fisheries sector. The region has an abundant variety of freshwater and marine fish, providing a source of livelihood for the local community and also attracting travelers who want to enjoy fishing or diving activities.[7]

In addition, West Manggarai also has potential in the tourism sector supported by its natural wealth. Tourist destinations such as waterfalls, lakes, beaches, and biodiversity are the main attractions for domestic and foreign tourists looking for an authentic natural adventure. However, the natural resources in West Manggarai also require protection and wise management to ensure the sustainability of its ecosystem. Cooperation between the local government, local communities, and other relevant parties is needed to safeguard the natural resources of West Manggarai. balance between the utilization of natural resources with environmental preservation and the sustainability of local livelihoods. [1]

The effort to protect Intellectual Property by the local government of West Manggarai Regency is not just an administrative step, but a deep commitment to provide strong legal protection for the ownership of intellectual works, both communal and personal. This protection is not only a bulwark for individual creators, but also a key driver in encouraging the growth of the creative industry, which is an important pillar in improving regional economic development.

In this context, West Manggarai Regency embraces the concept of creative economy vigorously, providing unlimited support to the development of micro, small, and medium enterprises (MSMEs), as well as local arts and cultural communities. This step is taken in the hope that West Manggarai can become a tourist destination that not only attracts tourists, but also extends the duration of their visit. Thus, the protection of Intellectual Property is not only a formal legal instrument, but also a key driver in building a sustainable and inclusive economic ecosystem. Furthermore, efforts to protect Intellectual Property do not stop at the registration stage alone. The local government also plays an active role in inventorying, identifying, and researching the potential of Intellectual Property in West Manggarai Regency. This is done to develop strategies and policies that are integrated in development planning documents, so that coaching activities, marketing facilitation, promotion, and capital assistance can be carried out in accordance with the needs and potential of the local community[8].

In an effort to simplify regulations, the local government of West Manggarai Regency does not only look partially at certain types of Intellectual Property. The regulation will cover all aspects of Intellectual Property rights, both personal and communal. For example, the potential in the ikat weaving industry, local coffee, or even culinary uniqueness such as Ikan cara, will be the main concern in this protection effort. With this inclusive approach, it is hoped that the potential of Intellectual Property in West Manggarai can be safeguarded, developed, and optimally utilized for the common welfare and sustainability of the regional economy.[9]

Furthermore, in the context of national law, legal reform is regulated through PP KI Komunal, a step in legal politics to inventory and maintain communal intellectual property which is basically a form of harmonization of regulations related to the protection of communal intellectual property rights in Indonesia. This is a very important initiation in order to appreciate and protect communal intellectual property in Indonesia. However, related to law enforcement, it has not been fully accommodated properly, there is no mechanism related to legal settlement in disputes that exist in Communal IP. This becomes very essential because, if there is a conflict between indigenous peoples in the discovery of Communal IP in the future.

Every region in Indonesia does not yet have a Regional Regulation that protects communal property, only in some areas that are quite popular in terms of traditional culture such as Bali, NTT, South Kalimantan etc. The importance of each region having a regulation so that legal protection exists in the communal property. There needs to be good integration between the local government and the central government in protecting Communal IP, this is important because the tribes in Indonesia are very diverse and have different characteristics and cultures. the importance of each region having regulations so that the legal protection in PP Communal IP can be implemented properly. Then, indigenous people's awareness of the importance of the

law on Communal IP is still relatively low, this can result in various violations of rights committed in ignorance of the governing law or intentionally.

Apart from protection, law enforcement is also an important issue in Communal IP, currently the lack of human resources and capacity of law enforcers, there is no related regulation in case of conflict, and other factors can be the cause of not achieving legal certainty over Communal IP Rights. On the other hand, various kinds of theft of Communal Intellectual Property still occur in Indonesia, this will have an impact on the cultural aspects and welfare of indigenous peoples. Because Communal IP is not only a matter of financial gain, but it is an identity of indigenous peoples that has been passed down from generation to generation and made into indigenous culture. The impact of the theft of Communal IP is clearly very detrimental, legal protection and governing laws must always be updated and adjusted based on the times without having to be harmed by various violations in Communal IP[10].

#### **4 Conclusion**

Problems of Communal IP are still widely found in the field, apart from protection, law enforcement is also a fairly important issue in Communal IP, currently the lack of human resources and capacity of law enforcement, then various kinds of theft of Communal Intellectual Property still occur in Indonesia, this will have an impact on the cultural aspects and welfare of indigenous peoples.

Communal IP protection is based on the appreciation of every creation and culture originating from indigenous peoples that has its own uniqueness and has economic value. Communal IP has been regulated in various regulations such as the UUHC, Trademark and Geographical Indication Law, Plant Variety Law, and Industrial Property Rights. These regulations are refined through the Communal IP PP and Regional Regulations (Perda). This is an effort for more comprehensive protection.

However, based on the political aspect of the law, improvements are still needed to the current regulations. Regional authority in protection efforts through regional regulations is also not fully owned by every region in Indonesia, only centered on several regions that have a well-known culture, for example the West Manggarai region of East Nusa Tenggara. Thus there is the potential for legal incompleteness in regional regulations, because each region must have its own traditional culture.

Through this approach, it is hoped that in the future it can form an ideal balance between protecting Communal IP and respecting the traditional knowledge rights of indigenous peoples. In addition, it is hoped that there will be further arrangements related to law enforcement in the event of conflict in the realm of Communal IP, and the establishment of regional regulations related to Communal IP in each region. It is important that indigenous peoples get an appreciation and protection of their culture, and can benefit both morally and economically for the country, nation and state of Indonesia.

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