

Legal Protection of Communal Intellectual Property in Traditional Culture Expression of The Bali Region

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Abstract. The state grants registered Geographical Indication holders an exclusive right to Geographical Indications as long as the repute, quality, and features that form the foundation for the preservation of Geographical Names still exist. The uniqueness of geographical indications compared to other types of intellectual property is that geographical indications are not individual rights, but are the communal intellectual property of a group of people. The distinctiveness derived from these geographical elements may considerably boost the added value and selling value of a object when paired with inventiveness in manufacturing, transmission, as well as business strategies. A device's value that is performing well, on the other hand, might give value to the area by emphasizing the region's distinctiveness. Indonesia is among the nation's biggest island nation countries. Indonesia, and Bali in particular, offer a broad range of geographical circumstances, customs, and cultural resources, including traditional knowledge and a diverse range of traditional cultural manifestations. Geographical factors, as well as the diversity of customs and cultures, play a vital influence in the creation of items with distinct characteristics that are not found in other places. Until date, Indonesia has struggled to establish legal protection for local products in order to maximize their economic worth.

Keywords: legal protection; communal intellectual property; traditional cultural expression; Bali

1 Introduction

Traditional Cultural Expression refers to a group of indigenous peoples' intellectual innovation that has potentially profitable worth and may be exchanged. Traditional cultural expressions are frequently linked to genetic resources because issues emerge surrounding their utilization, particularly how to locate and harness genetic resources, as a result of information supplied by indigenous peoples without adequate recompense. As is well known, a company that wants to use a genetic resource commercially must first conduct research to find the right genetic resource and then carry out laboratory tests to prove its benefits.

This process can take a very long time and cost a lot of money. If then they can obtain very valid information from a "human living treasure" or someone who has a deep understanding of traditional cultural knowledge and practices expressions, that can provide clues to the genetic resources needed. We can imagine how big the benefits that can be obtained because there is no need to spend a very large amount of money to carry out research activities. In fact, with current technological developments, it is also possible to obtain such information through the "genetic code" of a genetic resource, so that without bringing physical samples, commercial production can be carried out.

To meet the demands of modern society's comprehension of the features of each part of common intellectual property, Individually, the terms "genetic resources," "conventional wisdom," and "traditional cultural expressions" were coined. In the framework of modern Trademarks (IP), conventional wisdom is regarded closer to Patents, while traditional cultural manifestations are considered closer to Copyright, Industrial Design Rights, and Trademark Rights. These three parts are not separated from any other in the indigenous peoples' worldview, but rather form an integral part of their everyday lives. As a result, they are all referred to as living cultural legacy. Thus, all sorts of modern/conventional intellectual object can be linked to genetic power, wisdom representations as well as historical wisdom.

Indigenous knowledge and cultural manifestations in general have been developed over a lengthy period of time, and the inventor is no longer recognized. However, It is possible that a member of an indigenous society creates traditional knowledge and traditional cultural expression in the present through an event such as a dream. Furthermore, it is conceivable that a member of an indigenous group established indigenous practices and traditions representation that is recognized for its distinctiveness.

However, Cultural traditions and traditional cultural manifestations are not considered private property since a person's creation is regarded the property of all indigenous peoples in the context of customary law. Therefore, Traditional cultural manifestations and traditional knowledge are often not regarded to fit the standards for protection under modern/conventional intellectual property regimes. Various talks and the construction of international accords established the foundation for attempts to safeguard traditional knowledge and traditional cultural expressions as collective intellectual property as it developed at the international level. [1].

Copyright is a material right that arises from the brain's labor, not muscles, and is the consequence of human reasoning and thinking. Because the work of the brain, which includes thinking, reasoning, taste, and purpose, It must be poured or realized into intellectual activity, which is "intangible objects," because it is still abstract. Intellectual property among local entrepreneurs for works/products that leverage local experience is one of the intellectual property difficulties.

Every aspect of life is governed by law, including intellectual property. The law was created to guarantee legal certainty. Regarding tourism, the stability of the tourism climate is very important to ensure the sustainability of the existence of cultural products which are the greatest potential in Indonesia, especially for creators who are part of the tourism business activity itself. Many people have talked about intellectual property, but there are still many who do not understand. The protection of intellectual property rights must be given attention so that the public understands their rights. Bali has a bitter experience that so many cases of piracy of traditional cultural works in the past.

Specifically, regarding violations of intellectual property, especially communal intellectual property for silver handicrafts as an expression of traditional culture, the Balinese government suspects that there are 800 silver handicraft motifs that have been registered by foreign businessmen. If you look closely, there are several traditional Balinese communal intellectual properties containing philosophical values, local wisdom, and nobility which are often claimed to be owned for commercial purposes and/or other interests.

In 2008 a Balinese silversmith was sentenced to 2 years in prison for allegedly violating Article 72 Paragraph 1 of Law Number 19 of 2002 concerning Copyright by the Denpasar District Court for being accused of plagiarizing silver motifs that had been registered with copyright by an American citizen named John Hardy, who is also a silver businessman in Bali. Although Deni was finally acquitted of all charges because based on the judge's consideration,

Deni was not proven guilty. This makes Balinese silversmiths now filled with worry in silver work. Craftsmen, artists, and silver craft designers in Bali are restless following the registration of several original Balinese design motifs by foreign nationals which have been passed down from generation to generation.

2 Discussion

In Indonesia, traditional cultural expressions and community identity are legally protected. Traditions expressions are governed by both international and domestic legislation in Indonesia. Traditional Cultural Expressions are technically governed in Indonesia under Article 38 of Law Number 28 of 2014 respecting Copyright. According to this article, NRE encompasses one or more of the following ways of expression:

- a. oral literary, whether orally and in writing, in prose or poetry, on a variety of subjects and message content, which can take the shape of literary masterpieces or informational narratives;
- b. music, which may be vocal, instrumental, or a combination of the two;
- c. Dance, for example, is a form of movement.
- d. Wayang performances and folk plays, for example, are examples of theater.
- e. 2 different and three-dimensional creative crafts constructed of a variety of materials, such as leather, timber, wood, steel, rock, pottery, paper, fabrics, and other materials, or a combination of these; and
- f. Ceremonies of the past.

Traditionally Culture Language is a type of expression that has been passed down through generations of human intellectual creativity which is also a truly living and important embodiment of human civilization. Different ethnic communities have different cultures, and this shows the richness of the community. Traditional Cultural Expressions are formed slowly and gradually from various cultural images, their development is continuously influenced by culture. Through this cultural image, the community is able to develop a relationship with their culture.

Therefore, NRE becomes a sign/symbol of the ethnic identity of a community, which reflects that community, as well as distinguishes it from other communities. Traditional cultural expressions are also vital in ethnic communities' lives. NRE aids to the protection and sustainability of diversity, which is essential for the ethnic community's long-term growth. [2] Some traditional dances, for example, are the outcome of many levels of traditional talents. Thus, Traditional Cultural Expression not only contributes to cultural diversity, but it also serves as a marker, or tetenger, of ethnic community identity and survival.

The emergence of global markets creates commercial value opportunities for Traditional Cultural Expressions, which in turn also creates Opportunities for poor nations to thrive economically and poor countries [3]. Export items, in particular, are important to the economies of several impoverished nations, and the majority of these products are tied to Tradition manifestations, such as traditional clothing, are examples of traditions, handicrafts, are examples of traditional cultural expressions. clothes, and carpets. [4]

Several international conventions and national laws have directly provided legal protection in the intellectual property jurisdiction for Traditional Cultural Expressions. The Berne Convention on the Protection of Art and Literature (Berne Convention) includes EBT in a special category, namely works of unknown author/anonymous works" [5] Article 15(4) of the Berne Convention states that:

"It will be an issue for regulatory oversight in that nation to define the relevant authority who shall represent the author and be entitled to protect and enforce his rights in Union countries in the case of unpublished works in which the author's identity is unknown but there is every reason to believe he is a national of a Collective bargaining country."

Cultural Expressions of the Past are the result of joint, communal creations, which are passed down from ancestors, from one generation to the next, so the identity of the "creator" is usually unknown. From this vantage point, it appears that Traditional Cultural Expressions can be classified as works of unknown author, as defined by the Berne Convention. Article 15 (4) regulates authority/authority in the same way as an editor of anonymous works represents an unknown author to demand their rights. Article 15(4) of the Berne Convention, on the other hand, does not offer information on how a country's responsible body carries out its tasks and obligations, such as royalty distribution and awarding.

Traditional Cultural Expressions are like witness to the history of a community. Since the birth and growth of traditional cultural expressions is naturally a very long history, NRE contains treasures for humanity and social sciences. For example, many plays are based on ancient beliefs, poetry is based on folk songs, and novels are based on oral folk tales. Traditional Cultural Expressions can be considered as the essence of human culture which has extraordinary and important value. Daily lifestyles, values formed during everyday life in the community, harmonize and influence the creation and growth of Traditional Cultural Expressions. As a result, Traditional Cultural Expressions slowly and gradually form a unique picture of the culture and social identity of the community [6].

Traditional Cultural Expressions are all expressions of copyrighted works, whether in the form of objects or not, or a mixture of both, that indicate the existence of a traditional culture that is held communally and across generations, according to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Communitarian Ip Rights Data.

Traditional cultural expressions or in international discourse, the term Traditional Cultural Expressions is often used briefly as forms of Traditional Cultural Expression, for example, it can be in the form of dance, song, handicraft, design, ceremony, folklore or artistic expression and traditional culture. other. TCEs are passed down from one generation to another, maintained, used and developed by that community. TCEs are constantly growing, evolving and being reinvented. TCE can be tangible, intangible, or more generally a combination of the two.

Most Traditional Cultural Expressions are in the area of art, literature, and music, such as folklore, folk songs, and traditional crafts. This description of literature, music and the arts is important when we consider an adequate/suitable intellectual property system to protect NRE. However, the intellectual property rights system, as a field specifically designed for Western model individual rights, needs to be criticized, whether it is able to carry out the function of protecting collective rights effectively. Copyright appears to be the most discussed area of intellectual property law to protect Traditional Cultural Expressions T [7]

In Indonesia, Geographical indicators are covered under the Marks Law No. 20 of 2016. Geographical indications are awarded by the state as an exclusive right to registered GI holders as long as the reputation, quality, and features that serve as the foundation for granting protection for such Geographical Indications remain. The elements of geographical indication represent the social identity of the community and the values of the community, and have a unique cultural meaning associated with this community.

In actuality, however, many names, signs, and symbols linked with traditional cultural expressions are registered as trademarks by persons outside the community for economic interests. Many ethnic minorities, in particular, are unable to stop others from registering an

ethnic name as a trademark, especially if the term has numerous meanings.. Not all Traditional Cultural Expressions can get IG protection. NRE is more about the values and virtues contained in traditional culture, where NRE can form a geographical indication. So, geographical indications are one of the products of Traditional Cultural Expressions.

The conservation of indigenous cultural manifestations, particularly in Bali, is slowly beginning to show signs of improvement. Because the community has registered, two traditional cultural manifestations have been granted protection. In 2008 a Balinese silversmith was sentenced to 2 years in prison for allegedly violating Article 72 Paragraph 1 of Law Number 19 of 2002 concerning Copyright by the Denpasar District Court for being accused of plagiarizing silver motifs that had been registered with copyright by an American citizen named John Hardy, who is also a silver businessman in Bali.

Although Deni was finally acquitted of all charges because based on the judge's consideration, Deni was not proven guilty. This makes Balinese silversmiths now filled with worry in silver work. Craftsmen, artists, and silver craft designers in Bali are restless following the registration of several original Balinese design motifs by foreign nationals which have been passed down from generation to generation. For this reason, the people of Celuk Village in particular have registered their silver designs.

Celuk Gianyar Bali Silver and Gold Handicrafts have been produced by the Anggaluh community (metal craftsmen as accessories) in Celuk Village, Sukawati, Gianyar, Bali for generations since the early 20th century until today. The application for Geographical Indications of Celuk Gianyar Bali Silver and Gold Crafts was submitted by the Celuk Design Center (CDC) which is a community movement in Celuk Village which aims to make the area unique with its silver and gold crafts. The types of goods for which protection of Geographical Indications is applied are gold and silver handicrafts.

The characteristic in the design of this craft is the use of Jawan as the basic motif for Celuk jewelry, which is a motif component made of silver material in the form of balls of various sizes. Its distinctive design motifs are the Jawan motif, the Bun motif, the Gonda Fruit motif, and the Liman Paya motif. The standard permitted in the production of these crafts is the use of 92.5% silver (with a mixture of copper) and 18 to 22 carat gold, so that the product has a high quality. The production processes used are smelting techniques, plate making techniques, Jawan manufacturing techniques, and Bun-Bunan techniques. Supervision of quality, metal quality, and motifs is carried out by means of an inventory based on the type, group, function, shape, volume, and production technique.

The inventory is not individual characteristics and products but is communal and is also carried out using a descriptive method along with photos of the products. This is to avoid unauthorized use and to support the preservation of the culture and business of Celuk Gianyar Bali Silver and Gold Crafts as the identity of Celuk Village [8]. Celuk Gianyar Bali Silver and Gold Handicraft has been registered with Number IG.00.2018.000004 dated June 8, 2018 at the Directorate General of Intellectual Property with the name of the community applicant who is a member of the Celuk Design Centre.

Traditional cultural expressions that have received legal protection because they are registered are gringsing weaving. The weaving process has several stages, including rituals, spinning cotton into thread, unraveling the thread, dyeing the thread, drawing motifs, and just starting with weaving. These stages are carried out regularly, orderly, and disciplined to get good quality gringsing woven fabric. The manufacture of gringsing woven fabric begins with several stages that take quite a long time, starting from spinning cotton into threads, unraveling and grouping, tying and dipping into dyes. In dyeing, the yarn is soaked which takes months to get the color as expected. The dyed yarns are dry and ready to be woven. Weaving takes months,

even up to a year accordingly. The length of work depends on the difficulty level of the motif design and size.

Furthermore, he said that it takes about 12 months (a year) to make a gringsing woven cloth, with a size of 120 cm x 90 cm. According to him, a year is not long, because weaving and making motifs, composing colors requires patience, skill, and patience [9]. This is what makes the price of gringsing weaving has a high economic value, namely because the manufacturing process is long and not easy. Weaving Gringsing has been registered with IG.00.2015.000015 dated March 15, 2016 at the Directorate General of Intellectual Property with the name of the public applicant who is a member of the Tunun Gringsing Bali Geographical Indication Protection Society (MPIG TGB).

This weaving is sacred because of its complex technology, namely double ikat, which means the thread is cut/warp and the weft is both colored in the formation of a fabric pattern. Not only complicated, the double ikat technique contains a message of equality between two different people, such as male-female, good-bad, light-dark, etc. In Bali this equality is known as Rwa Bhineda. That is, he is two but in fact one, and if both are in a balanced condition it will produce an all-powerful power. A real example is electric energy which is positively and negatively charged.

That's why Balinese people not only respect those who are believed to be gods but also demons (in Bali it is known as Bhuta-Kala) get the same award (there are special rituals for Bhuta-Kala such as Metabuh Gentuh, offering offerings placed on the ground, etc.). In addition to the noble message through its complex technology, with three colors, namely red as a symbol of fire, black as a symbol of water, and yellowish white as a symbol of air and the basic pattern is a tread dara or a symmetrical plus sign as a symbol of balance, Tunun Gringsing Bali conveys a message to all of us. to maintain the balance of nature in order to avoid disease [10].

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