

Intellectual Property Rights on Traditional Knowledge

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Abstract. The intellectual property rights of traditional knowledge will be discussed in this study. Because Indonesia is such an ethnically and racially diverse country, there is a lot of traditional knowledge that has to be preserved. Using juridical normative research methods, accompanied by literature studies as a means for data collection, the descriptive analysis is carried out to produce in-depth and comprehensive data. The study results found that efforts were needed to reconcile existing laws and protect traditional traditions and wealth.

Keywords: Rights to Patent Rights; Knowledge; Traditional

1 Introduction

In terms of traditional knowledge, Indonesia, as an archipelagic country with varied tribes, customs, arts, and cultures, has immense potential. It has such a significant financial worth to help the community, this tremendous cultural potential is, in essence, a national asset that must be safeguarded and preserved. Conserved by the government in order for it to survive and thrive. Traditional knowledge is information that a community has gathered as a consequence ecological, social, and cultural factors interactions, as well as information gained by the group in understanding natural and environmental demands. [1]

Traditional knowledge is incorporated into intellectual activity based on the thoughts, ideas, or creations of a group of countries. All heritage book, artistic or academic performs, achievements, inventions, scientific advances, styles, products, titles and signifiers, unspecified data, and all other ritual innovations and creations arising from mental thought in the areas of business, scientific knowledge, articles, or art fall under the category of native culture.

According to the WIPO statement, traditional knowledge is not limited to specific expertise. Still, it covers the broadest spectrum of information, and it is these characteristics that set traditional knowledge apart from other types of knowledge, particularly its ties to a particular civilization, and it is these characteristics that set traditional knowledge apart from other types of knowledge. Farming, modern science, environmental knowledge, medicine knowledge, including medicine and healing (medicinal products expertise, such as related medicine and solutions), species diversity expertise (species diversity expertise), and expressions in the fields of arts, choreography, music, crafts, and language aspects are all examples of species diversity expertise. [2] Traditional knowledge is incorporated into intellectual work produced by social groups' ideas or creations. Cultural heritage is the Indonesian nation's culture, and it can be commercially used for the wealth and welfare of the community.

The World Intellectual Property Organization uses the term "traditional knowledge" to describe an artistic work that is customary and owned by traditional community organizations. The knowledge-based process is the product of human creativity and inventiveness in terms of intelligence, culture, and poetry. The protection of ip rights developed to indigenous peoples or traditional organizations of Indonesia are currently being examined as part of the IPR research. [3] Traditional knowledge The World Intellectual Property Organization uses the term "traditional community groups" to describe a creative work that is customary and held by traditional community organizations. The traditional knowledge process is the result of human invention and innovation in terms of knowledge, art, and literature. Indonesia is a country in Southeast Asia, indigenous peoples' or customary groups' intellectual property is protected by law currently being examined as part of the IPR research.

The community of traditional knowledge owners does not benefit from profit sharing. The government protects both traditional knowledge as part of biodiversity and Past culture is classified as belonging to the local community. That is to say, its physical form and ownership are both protected. The intellectual property rights for traditional knowledge in Indonesia will be discussed in this study.

2 Research Methods

The research uses normative juridical research methods.[4] For data mining, used literature study as a means for data collection. The data was collected in the form of primary, secondary, and tertiary data to complete the data as a whole.[5] The data was analyzed qualitative using a deductive technique, and the argument was tailored to the primary concerns to reach conclusions on the subjects under consideration.

3 Results and Discussion

History records from an ancient society that the right to control land and goods by a person is recognized and respected by the government to protect their interests and wealth. Along with changes in technology, the concept of wealth also changes. Currently, the legal system places wealth into three categories. First, most people recognize private property rights in personal property, known as tangible things; second, wealth in real terms such as land and buildings; and third, Intellectual property is a type of property. [6] When it comes to intellectual property, all countries recognize property rights in the form of product ideas, such as the form of copyrights, patents, trademarks and trade secrets, integrated circuit layouts, and plant varieties.

The word "intellectual property rights" or " The Anglo-Saxon legal term "intellectual property rights" is translated as "intellectual property rights." Intellectual Property Rights (IP) Rights within the civil law framework can be categorized as property rights. There is in line with Article 499 and Article 503 of the Civil Code (KUHPer), which defines objects as goods or rights that can be controlled with property rights. The object itself is classified into tangible objects and intangible objects.

According to Mahadi, what is meant by actual objects are material objects (stoffelijk voorwerp), and intangible objects are immaterial objects in the form of rights. Immaterial property rights can be the object of an object's rights, whereas object rights are absolute rights to an object. IPR is a fundamental right whose object is not an object.

The concept of IPR includes[7]:

1. Intellectual property rights attached to the owner are permanent and exclusive;

2. Rights obtained by other parties with permission from the owner (temporary), for example, the right to announce, reproduce, use certain products, or the right to produce specific products

Intellectual property is built on the concept of human-generated intellectual effort that necessitates the expenditure of energy, time, and money. Because of these sacrifices, the job created has economic worth due to the advantages it enjoys. It fosters the need for appreciation of the work in the form of legal protection for Intellectual Property based on this principle. Intellectual property is wealth that arises from or is born as a result of human intellectual abilities. Intellectual property refers to the ownership of rights to philosophical works created in the realms of knowledge, art, literature, and technology.

Copyright is "which field of law that concerns legal standing and is tied to creative endeavor or economic repute and reputation," according to David Bainbridge. [8] David's conception seems very close to the legal approach. It is logical because examining the issue of Intellectual Property will ultimately lead to the concept of law, especially regarding the protection of intellectual works. Meanwhile, another opinion says that Intellectual Property is an acknowledgment and appreciation to a person or legal entity for the discovery or creation of their scholarly work by granting them special social and economic rights.

Traditional knowledge is the work of conventional (customary) communities, which can be in the form of cultural customs, works of art, and technology that have been used for generations since the time of their ancestors and become the common property of indigenous peoples that are guarded and preserved. Traditional knowledge, according to the UN SubCommission on the Prevention of Discrimination and the Protection of Minorities, is knowledge that is inherited and evolves in response to environmental changes and is owned, A community, society, or ethnic group controls and operates it. "Knowledge, resourcefulness, and indigenous and local practices groups representing traditional lifestyles relevant for the discussion and sustainable use of biological variation," according to the CBD definition. [2]

According to the WIPO statement, traditional knowledge refers to a broad set of skills rather than a specific expertise. Traditional knowledge varies from other types of knowledge in that it is linked to a certain community, and standard ability exists as a result of these characteristics (passed down from generation to generation). Traditional knowledge is developed, preserved, utilised, and conserved in orthodox circles, and it usually relates to learning accumulated by a community over a long period of time and in a specific place.

Traditional knowledge is typically the knowledge that is crucial to a community's identity. Traditional knowledge is a form of creativity, production, and cultural expression that has been passed down through indigenous peoples, local communities, or individuals in the community for centuries. Past culture is strongly associated to use or use of physical, ecological, and mineral wealth, as well as sustainable use of natural resources and protection, all of whom have economical, industrial, and culture ramifications.

The public's and international organizations' attention has been drawn to the subject of conserving traditional knowledge as part of intellectual property rights. Genetics Classic Information and Folklore must be addressed in international forums by members of the International Intellectual Property Organization, based in Geneva, Switzerland. [2] IPR is viewed as a trade concern in the global system, with a Intellectual property, commercialization, and legal protection are all linked in some way. This is a reference to the old way of doing things knowledge that is inherited and evolves in response to environmental changes and is held or controlled by a specific community, community, or ethnic group.

Traditional knowledge, according to the WIPO paper, does not refer to a single type of knowledge but rather to a broad range of information. Traditional knowledge is knowledge that

is crucial. It is thus an innovation, production, and cultural expression established and preserved by indigenous peoples, local communities, or individuals in a country's local community that have done so for millennia.

Traditional knowledge should be protected for six key reasons, as follows: [9]

- a. It is necessary to carry out justice. It is fair and equitable if the owner of traditional knowledge whose knowledge is utilized and commercialized receives profit sharing or monetary or non-monetary payment.
- b. Conservation of traditional knowledge protection also entails environmental preservation, biodiversity, and long-term agricultural practices.
- c. We are adhering to historic and cultural norms (preservation). Traditional knowledge protection can be utilized to improve the community's value and trust in the importance of traditional knowledge, both inside and outside the community.
- d. Prevent unauthorized parties from abusing your data or committing bio-piracy. Prevent unauthorized parties from misusing your information or engaging in biopiracy. One option for reducing bio-piracy while ensuring fairness and equal treatment for traditional knowledge owners and users is to conserve traditional knowledge. Moni Wekesa believes that at least three criteria must be evaluated to avoid the misuse of conventional knowledge.
- e. Traditional knowledge is documented through the creation of a traditional knowledge database; (a) parties seeking legal recognition through IPR must be able to show evidence of traditional knowledge owners' approval of utilization, ownership sharing, or profit-sharing; (b) parties seeking formal protection through IPR must be able to show evidence of traditional knowledge owners' approval of utilization, ownership sharing, or profit-sharing.
- f. To increase the importance of traditional knowledge development and application (promotion of its use). The authorities must endeavor to promote the application of traditional knowledge and establish protections against abuse, in addition to putting safeguards in place by restricting access to conventional wisdom.

The Indonesian government to establish a one-of-a-kind strategy to protect traditional knowledge's intellectual property rights. Three bills will be introduced: one on traditional knowledge and traditional cultural expressions, one on genetic resource protection and management, and one on traditional knowledge and traditional cultural expressions Biological Diversity. The implementation of traditional knowledge protection still takes a long time.

According to Wheeler, the state can establish a collective ability to enforce human rights by successful legislative and institutional interventions, which is a constructive role for the state in fulfilling the right to culture. Because the state has the functional authority to enforce these rights as part of its constitutional powers, a legal framework, the state's participation in fulfilling cultural human rights is critical. Traditional knowledge preservation as a community right of local communities necessitates the creation of an authorized institution to administer, manage, and coordinate Preservation of traditional knowledge within the ambit of sovereign authority.

Knowledge based access and benefit-sharing will require the assistance of institutions dedicated to the preservation of traditional knowledge. The Department of Environment, International Affairs, Research and Innovation, and the Directorate General of Intellectual Rights are among the organizations striving to protect intellectual property on traditional knowledge. Traditional knowledge needs to be legally protected in developing nations because security is seen as an action performed to safeguard the survival of intangible cultural resources and communal creativity. An inventory can be used to safeguard property rights to traditional knowledge. The action of gathering data on traditional skill in a given location is known as inventory or documentation of traditional knowledge. It can also be accomplished through

disseminating traditional knowledge as broadly as feasible. Legal protection is meant to provide not only legal but also economic benefits.

4 Conclusion

Traditional knowledge, which is the Indonesian nation's intellectual labor that has existed since the ancestors' time and has been produced and maintained as part of intellectual property rights from generation to generation, has not received adequate legal protection. Aside from the lack of laws that specifically control traditional knowledge, the current system of intellectual property rights rules and regulations has failed to offer protection and economic benefits to traditional knowledge owners. Intellectual Property Rights (IPR) have not been properly applied to traditional learning as a means of acknowledgment of intellectual work rights and awards. The control of IPR in national laws and regulations aims to give intellectual property in Indonesia awards and protection. Despite this, traditional knowledge of IPR has not leveraged these benefits due to a number of hurdles, including a lack of documentation and a limited understanding of IPR.

References

- [1] M. R. Mungmachon, "Knowledge and Local Wisdom : Community Treasure," *Int. J. Humanit. Soc. Sci.*, vol. 2, no. 13, pp. 174–181, 2012.
- [2] D. Bainbridge, *Intellectual Property*. England: Finacial Times Pitman Publishing, 1999.
- [3] W. Puspitasari, "Perlindungan Hukum terhadap Pengetahuan Tradisional dengan Sistem Perizinan: Perspektif Negara Kesejahteraan," *J. Ilmu Huk. Padjajaran*, vol. 1, no. 1, 2014.
- [4] I. M. P. Diantha, "Metodologi Penelitian Hukum Normatif," *Teor. Metodol. Penelit. a.*, 2017.
- [5] M. Abdul Kadir, "Hukum Dan Penelitian Hukum.," Bandung PT. Citra Aditya Bakti., 2015.
- [6] K. Setyowati, "Implementasi sistem hak kekayaan intelektual (HKI) pada pengelolaan plasma nutfah," 2002.
- [7] A. K. Muhammad, *Kajian Hukum Ekonomi Hak kekayaan Intelektual*. Bandung: PT. Citra Aditya Bakti, 2001.
- [8] D. J. Bainbridge, *Cases & Materials in Intellectual Property Law*. London: Piman Publishing, 1995.
- [9] M. Djumhana and R. Djubaedillah, *Hak Milik Intelektual Sejarah, Teori, dan Praktiknya di Indonesia*. Bandung: PT. Citra Aditya, 2014.