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Registering Ternate City People's Traditional Knowledge as Property Rights

Abstract

Traditional knowledge is a subset of intellectual activity that stems from a country's collective ideas, opinions, or discoveries. This research aims to analyze: (1) The municipal government provides legal protection for intellectual property rights in traditional knowledge in order to increase the welfare of Ternate City inhabitants and (2) the potential for registering intellectual property rights related to traditional knowledge from 2019 to 2023 in Ternate City. The legislation method and the case approach were used in this empirical study. The most feasible way for the Indonesian government to protect traditional knowledge now is to strengthen the database on traditional knowledge. Special regulations are urgently needed that regulate the implementation of licensing procedures for users of Traditional Knowledge. Urgency of these research because It was found that from 2019 to 2023 in Ternate City, no traditional knowledge database has yet existed. On this basis, there needs to be tactical steps from the Ternate City Regional Government in encouraging city branding about the utilization of traditional knowledge. Novelty of this research because Ternate has an abundant amount of traditional knowledge from its hundreds of ethnic groups that need to be legally protected but nearly zero traditional knowledge processed with property rights. This paper is urgent and it contributes to science as it provides knowledge on how to legally protect this valuable knowledge.

Keywords: Intellectual; Legal; Rights; Ternate; Traditional.

1. INTRODUCTION

Traditional knowledge is an intellectual element that arises from collective ideas, concepts, or discoveries.¹ It encompasses tradition-based literature; artistic or scientific works; performances; inventions; scientific discoveries; designs; brands; names and symbols; undisclosed information; and other innovations and creations of other tradition-based activities as a result of intellectual activities in industrial, scientific, literary, or artistic fields.

Puspitasari found that the necessity to conserve traditional knowledge is a critical topic of the IPR Council (Council for Trade-Related Aspects of Intellectual Property Rights).² A significant issue related to Intellectual Property Rights is protection over traditional knowledge. These creations are generally produced by Traditional societies that are directly related to their daily activities that frequently happen by chance. For example, folklore, dance, traditional crafts, the development of traditional medicinal plants, land management methods, and so on were coincidentally created through traditional people's daily activities. Provisions of Article 39 of the Republic of Indonesia's Law No. 28 of 2014 The state has actualized copyright on traditional cultural expressions.³ Traditional cultural manifestations must be inventoried, protected, and preserved by the state but in this cases this is not happened in the Ternate City thus its became an urgency of this research. The utilization of traditional cultural manifestations must take into account the values that exist in the carrying community. Further provisions on Copyright owned by the state for traditional cultural expressions are governed by Government

¹ Zaenal Arifin and Muhammad Iqbal, "Perlindungan Hukum Terhadap Merek Yang Terdaftar (Legal Protection of Registered Brands)," *Jurnal Ius Constituendum* 5, no. 1 (2020): 53, <https://doi.org/10.26623/jic.v5i1.2217>.

² Wina Puspitasari, "Perlindungan Hukum Terhadap Pengetahuan Tradisional Dengan Sistem Perizinan: Perspektif Negara Kesejahteraan (Legal Protection of Traditional Knowledge with a Licensing System: Perspective Welfare State)," *Jurnal Ilmu Hukum Padjajaran* 1 (2014): 3, <https://doi.org/10.2304/pjih.v1n1.a3>.

³ Callesta Aydelwais De Fila Asmara, Zaenal Arifin, and Fahrudin Mubarak Anwar, "Penyelesaian Sengketa Hak Cipta Antara Pencipta Lagu Dan Penyanyi (Settlement of Copyright Disputes between Songwriters and Singers)," *USM Law Review* 6, no. 2 (2023), <https://doi.org/10.26623/julr.v6i2.7499>.

Regulations, according to Article 39 clause (4). However, there are not yet any government regulations regarding the copyrights of traditional cultural expressions.⁴

Research of Sofyarto showed that the protection of IPR basically provides monopoly rights which provides IPR owners economic benefits of their intellectual creations. In reality, IPR laws cannot protect traditional knowledge and wisdom. No laws nor regulations in Indonesia protect communities whose traditional knowledge is commercially exploited.⁵ Provisions of Article 10 clause (2) Law No. 28 of 2014 regarding amendments to Law No. 19 of 2002 on Copyright only regulates folklores but it excludes the protection of traditional knowledge's copyright.

Djumhana stated that considering its characteristics and uniqueness, it is important to provide protection for traditional knowledge. There are several reasons for the need to develop protection for traditional knowledge, including the considerations of justice, conservation, as well as the maintenance of culture and traditional practices. Traditional knowledge and its components also need to be protected from appropriation by unauthorized parties. It is also crucial for developing the application of traditional knowledge.⁶ The protection of traditional knowledge plays a positive role in providing support to these communities in preserving their traditions. Traditional knowledge is the outcome of human creativity and invention in the fields of knowledge, art, and literature. Traditional knowledge can be economically utilized for the progress and welfare of society.

The existence of traditional knowledge has become a new legal issue because there is no domestic legal tool capable of providing adequate legal protection for traditional knowledge, which is currently widely exploited by irresponsible parties, this became a novelty of this research since its became new things in Ternate City. Besides that, at the national level, there is not yet an agreement to legally protect this traditional knowledge.⁷ This bring the new insight about legal protection for the traditional knowledge in Ternate City because this a new thing and the level of legal protection with property rights is nearly zero and without any data.

Such knowledge was created by traditional communities from generation to generation in Indonesia, including the traditional knowledge in Ternate City, North Maluku Province. This paper is crucial because the traditional knowledge of Ternate City as a city with diverse cultures has the potential to become material wealth when it is manifested in the form of products that have distinctive designs. From the perspective of intellectual property law, this potential is a material right because it is a form of IPR. It must be considered that traditional knowledge is a distinctiveness and identity of the Indonesian nation that can economically be exploited for public progress and welfare. Therefore, IPR is seen as a trade problem that is related to three

⁴ Rindia Fanny Kusumaningtyas et al., "Traditional Cultural Expression as an Embodiment of Indigenous Communities and Regional Identity (Semarang Indonesia Case)," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 45–92, <https://doi.org/10.15294/jils.v8i1.63191>.

⁵ Karlina Sofyarto, "Perlindungan Hukum Hak Kekayaan Intelektual Atas Pengetahuan Tradisional Terhadap Perolehan Manfaat Ekonomi (Legal Protection Of Intellectual Property Rights To Economic Benefits Of Traditional Knowledge)," *Kanun Jurnal Ilmu Hukum* 20, no. 1 (2018): 149–62, <https://doi.org/10.24815/kanun.v20i1.9832>.

⁶ M. Zulfa Aulia, "Perlindungan Hukum Ekspresi Kreatif Manusia: Telaah Terhadap Perlindungan Hak Kekayaan Intelektual Dan Ekspresi Budaya Tradisional (Legal Protection of Humans' Creative Expression: Analysis of the Protection of Intellectual Property Rights and Traditional)," *Jurnal Hukum Ius Quia Iustum* 14, no. 3 (2007): 359–72, <https://doi.org/10.20885/iustum.vol14.iss3.art8>.

⁷ M. Zulvi Romzul Huda Fuadi and Ayon Diniyanto, "Written Quotations and Its Legal Protection: How Indonesian Law Reform on Copyrights Law?," *Journal of Law and Legal Reform* 3, no. 1 (2022): 1–16, <https://doi.org/10.15294/jllr.v3i1.53630>.

5 important aspects, namely intellectual property, commercialization, and legal protection. This is related to traditional knowledge that is owned, controlled, and used by a particular community or ethnic group and is passed down from generation to generation.⁸ Central focus of this research is the urgency for building consciousnesses about traditional knowledge to be processed with property rights, because property rights is one of the legal protection for the Ternate traditional knowledge.

Context from this research is to fulfil legal protection for the traditional knowledge in Ternate city. This legal protection is through the property rights for the traditional knowledge/ Without property rights there is a chance this traditional knowledge would be claimed by commercial entities or even another countries,

Therefore, this research aims to analyze: (1) The legal protection for intellectual property rights of traditional knowledge to improve the welfare of Ternate City citizens provided by the local government and (2) the potential for registering intellectual property rights related to traditional knowledge from 2019 to 2023 in Ternate City.

2. METHOD

This empirical research employed the statute approach and the case approach. In this research, the researcher used a live case study approach on a legal incident with an ongoing process. Thus, the author directly carried out observations or research in the field in order to obtain accurate truth in the process of perfecting this writing. Therefore, the aim and use of this study is basically to show the way to solve research problems.⁹ This research location was at the Regional Office of the Ministry of Law and Human Rights, North Maluku. This office was located at 40 Cengkeh Afo Street, Maliaro Village, Central Ternate, Ternate City.

The researchers collected data from literature studies and field studies where the researcher conducted interviews. The researcher used two types of data, namely, primary data obtained through field studies and secondary data sourced from literature studies.¹⁰ A literature study was carried out by reviewing information obtained from scientific books, research reports, scientific essays, theses and dissertations, regulations, decrees, annual reports, encyclopedias, as well as other written and electronic sources. Then, the interviews were conducted by means of direct and in-depth questions and answers with research subjects about matters related to the problem.

The results of the field study inventory were analyzed to obtain conclusions. These results were then analyzed using integrative and conceptual analysis methods which tend to be directed at finding, identifying, processing, and analyzing legal materials to understand their meaning, significance, and relevance. The data obtained were systematically arranged after being selected based on problems and seeing its conformity with applicable regulations. Then, they were discussed theoretically and combined with the reality in the field to produce conclusions.

3. RESULTS AND DISCUSSION

⁸ Elfrida Ratnawati and Siti Nurbaiti, "Transportasi Yang Terintegrasi Di Wisata Cagar Budaya Kota Tua Jakarta (Integrated Transportation in Cultural Heritage Tourism in the Old City of Jakarta)," *Jurnal Ius Constituendum* 8, no. 1 (2023), <https://doi.org/10.26623/jic.v8i1.5489>.

⁹ Khudzaifah Dimiyati and Kelik Wardiono, *Metode Penelitian Hukum (Legal Research Method)* (Surakarta: Universitas Muhammadiyah Surakarta, 2004).

¹⁰ Asnawi Mubarak et al., "The Relationship Of State Law And Customary Law," *Jurnal Jurisprudence* 13, no. 2 (2023): 188–204, <https://doi.org/10.23917/jurisprudence.v13i2.2914>.

3.1 The Regional Government's Legal Protection of Intellectual Property Rights for Traditional Knowledge to Improve Community Welfare in Ternate City

Intellectual property rights are a series of legitimate rights and interests that are closely related to the implementable 'product'.¹¹ Meanwhile, intellectual property is an intangible product resulting from human intellectual activity.¹² The essence of IPR is a particular construction or creation which is categorized into the arts, industry, science, or a combination of the three. Internationally, Intellectual Property Rights are deemed as rights relating to, arising from, or born due to human intellectual abilities in the form of discoveries in the fields of technology, science, and art.

The concept of Intellectual Property Rights (IPR) is also defined as material rights, namely rights to an object that originates from the work of the human brain and reasoning. The results of the brain's work are formulated as intellect. Intellectuals are people who optimally utilize their brains' functions. They are capable of using their ratio as well as thinking rationally and logically.¹³

Objects regulated in Intellectual Property Rights are works that arise from human intellectual abilities through creativity, feeling, and intention in the fields of science, art, literature or technology.¹⁴ One of the important issues related to intellectual property rights (IPR) today concerns to what extent traditional knowledge is protected. Traditional knowledge is knowledge developed by indigenous people or tradition-based intellectual works.¹⁵ There are only 4 (four) regulations or laws that explicitly or implicitly mention traditional knowledge, namely:¹⁶

First, the Republic of Indonesia Law Number 5 of 2017 on the Advancement of Culture. Article 5 letter e states that one of the Advancements of Culture objects is traditional knowledge. It consists of oral traditions; manuscripts; customs; rites; traditional knowledge; traditional technologies; arts; languages; folk games; and traditional sports.

Second, namely the Copyright Law, namely Law No. 19 of 2002 Article 10 states that the state holds the copyright for works of prehistoric heritage, history, and other national cultural objects. Furthermore, Article 10 paragraph (2) letter a explains that the cultural products of the people which are common property, such as stories, tales, fairy tales, legends, chronicles, songs, handicrafts, choreography, dance, calligraphy and other works of art are maintained and protected by the country

¹¹ Pritha Arintha Natasaputri, "Perlindungan Hukum Atas Karya Cipta Terhadap Tindakan Fanfiksasi Studi Pada Novel The Twilight Saga 'Breaking Dawn' Dan Web Novel Renesmee's Normal Life (Legal Protection of Copyrighted Works Against Acts of Fanfixation Study of The Twilight Saga Novel 'B,'" *USM Law Review* 1, no. 2 (2018), <https://doi.org/10.26623/julr.v1i2.2254>.

¹² Nourma Dewi and Tunjung Baskoro, "Kasus Sengketa Merek Prada S.A Dengan PT. Manggala Putra Perkasa Dalam Hukum Perdata Internasional (Prada S.A Brand Dispute Case with PT. Manggala Putra Perkasa in International Private Law)," *Jurnal Ius Constituendum* 4, no. 1 (2019): 22, <https://doi.org/10.26623/jic.v4i1.1531>.

¹³ Amri Hariri, "Digitalization of Intangible Cultural Heritage (ICH) Archives As Legal Protection of Intellectual Property Rights," *Khazanah Al-Hikmah: Jurnal Ilmu Perpustakaan, Informasi, Dan Kearsipan* 9, no. 2 (2021): 145–56, <https://doi.org/10.24252/kah.v9i2a7>.

¹⁴ Desak Putu Dewi Kasih et al., "Policies Concerning Sacred and Open Traditional Cultural Expressions: Tourism and Creative Economy in Bali Context," *Jatiswara* 38, no. 1 (2023): 14–27, <https://doi.org/10.29303/jtsw.v38i1.475>.

¹⁵ S. Kumilasari et al., "Indonesia's Traditional Knowledge Documentation in Intellectual Property Rights' Perspective," *Sriwijaya Law Review* 2, no. 1 (2018): 110–30, <https://doi.org/10.28946/slrev.vol2.iss1.114.pp110-130>.

¹⁶ Purnama Hadi Kusuma and Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal (The Protection of Traditional Cultural Expression and Geographic Indication: An Intellectual Property with Communal Ownership)," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107–20, <https://doi.org/10.14710/jphi.v4i1.107-120>.

8 The state is obliged to inventory, maintain, and preserve traditional cultural expressions.¹⁷ The use of traditional cultural expressions must pay attention to the values that the bearing community embraces. Article 39 clause (4) states that further provisions regarding Copyright held by the State for traditional cultural expressions are regulated by Government Regulations. However, no government regulations regarding copyrights related to traditional cultural expressions have been issued.

5 Third, the Plant Variety Protection/PVP Law (Law No. 29 of 2000 of Plant Variety Protection) is contained in Article 7 which. It states that local varieties belonging to the community are controlled by the state. Control by the state as intended in clause (1) implemented by the Government, where the Government is obliged to name local varieties as intended in clause (1), provisions for naming, registration, and use of local varieties as intended in clauses (1), (2), and (3), as well as the agencies responsible for these tasks will further be regulated by the Government.

1 Fourth, Law No. 5 of 1994 on the Ratification of the United Nation's Convention on Biological Diversity (UNCBD). Article 8 of the UNCBD, states that signatories to the convention are obliged to respect, protect, and maintain the knowledge, innovations, and practices of indigenous and local communities that reflect their lifestyles and traditional characteristics, in accordance with the conservation and sustainable use of biological diversity and promote its wider application with the consent and involvement of the owners of such knowledge, innovations, and practices and encourage the equitable sharing of profits resulting from the utilization of such knowledge, innovations, and practice.

2 The regulation of intellectual property over traditional knowledge and other similar intellectual property is a new form of legal problem that has nationally and internationally developed as a new form of intellectual property in the last decade. It has emerged as a new legal problem because optimal legal regulations on traditional knowledge have yet to exist in the national and international scope.

46 There is an increasing awareness of the protection of traditional communities' traditional knowledge in developing countries. The IPR system tends to favor developed countries that have high technology, which in turn facilitates and increases the intensity of economic exploitation and cultural erosion of traditional communities in developing countries. The protection of traditional knowledge in Indonesia is crucial for several reasons, namely: (1) there are potential economic benefits resulting from the use of traditional knowledge, (2) to create justice in the world trade system, and (3) there is a need to protect the rights of local communities.¹⁸

15 Even though it is intended to reward inventors or creators of ideas, IPR for traditional knowledge is difficult to obtain because, in accordance with the nature of customary law, most traditional knowledge is common property (communal) which has been discovered and used jointly by the community for generations. Meanwhile, the condition for obtaining patent rights is that the invention for which a patent is requested must have a novel nature that has never been previously disclosed in any way and in any country. In addition, there is a requirement

¹⁷ Meirza Aulia Chairani, Angga Pramodya Pradhana, and Taufiq Yuli Purnama, "The Urgency of Developing Law as a Legal Basis for the Implementation of Artificial Intelligence in Indonesia," *Law and Justice* 7, no. 1 (2022): 35–45, <https://doi.org/10.23917/laj.v7i1.760>.

¹⁸ Kurnilasari et al., "Indonesia's Traditional Knowledge Documentation in Intellectual Property Rights' Perspective."

that the to-be-patented invention must contain an inventive step (not foreseeable) and be applicable in the industry. Such requirements are difficult to be fulfilled by traditional knowledge.¹⁹

Currently, the most possible protection for traditional knowledge by the Indonesian government is strengthening its database of traditional knowledge to show that Indonesia truly owns this traditional knowledge. This is to prevent false claims by other countries. Apart from that, protection with a benefit-sharing mechanism could be an alternative with a mechanism agreed upon by the parties before the government passed the Sui Generis Bill on Protection of the Utilization of Traditional Knowledge and Folklore Expressions which is currently still an agenda of the Legislative House.²⁰ In general, the following are main reasons why traditional knowledge must be protected, namely:²¹

Central focus of this article is preventing abuse by unauthorized parties or avoiding bio-piracy. The protection of traditional knowledge is one way to reduce the practice of intellectual property piracy (bio-piracy) while ensuring justice and balanced treatment between owners and users of traditional knowledge. The traditional knowledge would be preserved if the authority give property rights (IPR) and its need a coordination process from any stake holder.

Traditional knowledge is documented through the construction of a traditional knowledge database: (a) there is a mandatory requirement to state the origin of the material for the intellectual property that will be requested for legal protection and (b) parties who will seek legal recognition through IPR must show proof of agreement on the use, division of ownership, and distribution of profits from the owner of traditional knowledge. After documented then it could be registered for IPR, as a form of legal protection.

The concept of protecting traditional knowledge as described by Duffield is in line with the protection model developed by the World Intellectual Property Organization (WIPO). In general, the World Intellectual Property Organization explains two protection models, namely:²²

First, the defensive protection model, which refers to efforts aimed at preventing the granting of traditional knowledge IPR to other parties without the knowledge and permission of the traditional knowledge owner. Defensive protection of traditional knowledge affects patent registration in terms of obligations to disclose the origin of genetic resources and/or traditional knowledge related to inventions.

Second, positive protection which can be carried out through two forms of legal action, namely by more effectively using laws related to IPR or by establishing a special law on Communal Intellectual Property.

¹⁹ Afifah Kusumadara, "Pemeliharaan Dan Pelestarian Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional Indonesia: Perlindungan Hak Kekayaan Intelektual Dan Non-Hak Kekayaan Intelektual," *Jurnal Hukum Ius Quia Iustum* 18, no. 1 (2011): 20–41, <https://doi.org/10.20885/iustum.vol18.iss1.art2>.

²⁰ Syarifah Mahila, *Traditional Knowledge Dalam Sistem Hukum Hak Kekayaan Intelektual Indonesia (Traditional Knowledge in the Indonesian Intellectual Property Rights Legal System)* (Jambi: Fakultas Hukum Universitas Batanghari, 2010).

²¹ Ria Wierma Putri et al., "The Legal Protection Towards Traditional Clothes: Intellectual Property Regimes in ASEAN," *Substantive Justice International Journal of Law* 5, no. 1 (2022): 49–68, <https://doi.org/10.56087/substantivejustice.v5i1.165>.

²² T. R. Nugroho, Bimo Satria Fajrin, and Muhammad Adji Rahardian Utama, "Legal Protection of Copyright in the Globalization Era: A Comparison of Indonesia and China," *Journal of Law and Legal Reform* 1, no. 4 (2020): 671–80, <https://doi.org/10.15294/jllr.v1i4.39424>.

There is a problem that legal experts deem as lacking clarity which is the definition of a community that 'owns' the traditional knowledge. Are the 'owners' indigenous people or local people in general (people living outside of urban areas who still use traditional practices/technology, but no longer have customary legal institutions that firmly enforce traditional practices)?²³

This problem also makes it difficult to identify their economic interests. On one hand, when viewed from the perspective of the state (the government of a developing country), in terms of economic development, the community is the object of development. Law is used to change such a society, making it modern (in terms of their way of life, economic needs, etc.). On the other hand, the understanding that traditional knowledge or traditional works are "common property" or "common heritage of all mankind" can be seen as an effort to prevent prolonged conflicts in terms of ownership rights claims that could arise in Indonesia.

The concept of traditional knowledge and traditional cultural expressions is closely related to the region which "owns" the traditional knowledge. Thus, provincial and regency/city governments have important duties and functions in protecting it. The governmental regional autonomy concept emphasizes the duties and functions of government whose authority is divided between the central government, provincial government, and regency/city governments. The existence of traditional knowledge and traditional cultural expressions is closely related to regions as "owners" of traditional knowledge. Therefore, regional governments, both provincial and regency/city, have important duties and functions in protecting it.

Legal protection efforts for the use and importance of developing traditional knowledge (promotion of its use) should support the use of traditional knowledge.²⁴ It must develop efforts aimed at preventing misuse (misappropriation) by unauthorized parties. In Ternate, there is nearly zero IPR for the traditional knowledge and no official data about IPR for the traditional knowledge and thus the IPR for the legal protection was main concern of this research.

Misappropriation means the usage of certain cultures by other parties while ignoring the rights of the local communities for traditional knowledge and biological resources, which belong to that society concerned.²⁵ Therefore, the protection of traditional knowledge is one way to reduce the practice of intellectual property piracy (bio-piracy), while ensuring justice and balanced treatment between owners and users of that traditional knowledge in Ternate. Its important to protect the traditional with IPR and preventing the bio Piracy

Traditional knowledge has certain characteristics, including that traditional knowledge is knowledge that includes traditions based on innovation, creation, and practices with initial forms and is used by indigenous communities. Traditional knowledge is passed down orally from generation to generation. This condition ultimately creates non-static traditional knowledge. As non-static knowledge, this knowledge always undergoes modifications. They

²³ Kholis Roisah, "Legal Politics of Protection of Indonesian Traditional Cultural Expressions/Folklore," *Diponegoro Law Review* 2, no. 1 (2017): 185, <https://doi.org/10.14710/dilrev.2.1.2017.185-202>.

²⁴ Muhammad Ananta Firdaus, Risni Ristiawati, and Salma Saphira, "Formulasi Kebijakan Pelaksanaan Perlindungan Kawasan Sempadan Sungai Di Kota Banjarmasin (Policy Formulation for Implementing River Border Protection in the City of Banjarmasin)," *Jurnal Ius Constituendum* 6, no. 2 (2021), <https://doi.org/10.26623/jic.v6i2.3667>.

²⁵ Priscilia Sakul, "Perlindungan Hukum Terhadap Hak Cipta Warisan Budaya Batik Bangsa Indonesia Ditinjau Dari Perspektif Hukum Internasional (Legal Protection of Batik Cultural Heritage Copyright of the Indonesian Nation Reviewed from the International Law Perspective)," *Lex Privatum* 8, no. 3 (2020): 184–92, <https://doi.org/10.47268/sasi.v20i1.348>.

are then adopted with changes according to the needs of the user. Traditional knowledge is also mostly owned by the community (communal) rather than individuals. It functions to support the lives of traditional knowledge owners or creators with a non-profit orientation.²⁶

According to the author, the protection of traditional knowledge is a manifestation of the real urgency to prevent its damage, loss, or destruction. Traditional knowledge is preserved by maintaining its noble values and wisdom, using it in daily life, maintaining its diversity, reviving and maintaining the cultural ecosystem for each traditional knowledge, as well as passing on traditional knowledge to the next generation.

Regulation of the Minister of Law and Human Rights Number 13 of 2017 on Communal Intellectual Property Data, Article 1 number 3 states that traditional knowledge is intellectual work in the field of knowledge and technology that contains elements of traditional heritage characteristics that are produced, developed, and maintained by a particular community or society.²⁷

Article 3 of the Regulation of the Minister of Law and Human Rights No. 13 of 2017 which was amended to Article 8 of the Republic of Indonesia Government Regulation Number 56 of 2022 on Communal Intellectual Property states that traditional knowledge as Communal Intellectual Property consists of²⁸ technical skills (know-how); skills; learning; agricultural knowledge; technical knowledge; ecological knowledge; knowledge of medicine, including knowledge related to drugs and healing procedures and knowledge related to genetic resources; community customs; rites (magical); celebrations; traditional economic system; social organization system; knowledge and behavioral habits regarding nature and the universe; and/or skills in making traditional crafts, traditional food/drinks, and traditional modes of transportation.

Based on the description above, the focus of the author's research is the urgency of providing legal protection of intellectual property rights for traditional knowledge carried out by the Regional Government to improve the welfare of the Ternate City people based on the Minister of Law and Human Rights Regulation Number 13 of 2017 and the Republic of Indonesia Government Regulation Number 56 of 2022 on Communal Intellectual Property. Researchers categorized the traditional knowledge of Ternate City citizens as follows: Technical skills (know-how) of the Ternate City people and proficiency, which is the ability, capability, intelligence, or skill in carrying out a certain thing. Meanwhile, technical words are words that are often used in certain fields. Thus, one of the Ternate citizens' technical skills (know-how) identified by the author is Ternate weaving.

Ternate weaving is a handicraft that continues to be preserved. Ternate people call Ternate weaving *Rapidino*. The word *Rapidino* comes from the Ternate language which means "neat cloth". Woven fabric is made using *Gedongan*. In ancient times, the thread for making woven cloth was spun from pineapple leaf fiber. But over time, currently, people use cotton

²⁶ Christoph Beat Graber and Martin A. Girsberger, "Traditional Knowledge at the International Level: Current Approaches and Proposal for a Bigger Picture That Includes Cultural Diversity," UNILU, 2006, http://www.unilu.ch/files/graber-girsberger_tkcd_endg.pdf.

²⁷ The Government of the Republic of Indonesia, "Article 1 Number 3 Minister of Law and Human Rights Regulation Number 13 of 2017 Concerning Communal Intellectual Property Data" (2017).

²⁸ The Government of the Republic of Indonesia, "Article 3 of the Minister of Law and Human Rights Regulation Number 13 of 2017 Concerning Communal Intellectual Property Data" (2017).

thread for Ternate weaving. The Ternate weaving motif still retains the *iris pondak*, diamond cut, *tumbak* head, *popia* flower, *rica* flower, *tanjung* flower and *suji-suji* motifs.

Currently, Koloncucu is an area in Ternate that is known for its weaving crafts. Ternate weaving is more widely applied as a bottom cloth. There were different motives for men and women in ancient Ternate society. Men use woven cloths with a large patterned side of the cloth on the back. Meanwhile, for women, the large patterned side is placed at the front.

Ecological knowledge of Ternate City people, as creatures living in the cosmos, humans are always faced with relationship problems with those around them. There are many ways in which humans interact with nature. The people of Ternate City practice wisdom and dialectics with nature through the traditional Kololi Kie Moto Ngolo ceremony. Based on local word genealogy, *Kololi Kie* means "around the mountain". So, this traditional ceremony is a ritual carried out around a mountain on Ternate Island, namely Mount Gamalama.

Secara akademis kajian tentang traditional knowledge adalah sangat menarik untuk di bahas, karena ini menyangkut tentang kearifan lokal dan hukum adat. Local knowledge adalah hal yang sangat unik dan tidak ada di daerah lain. Secara akademis, local knowledge merupakan sesuatu yang dapat menjadi kajian akademis secara hukum. Kajian tentang local knowledge yang berkaitan dengan hukum adat dan kearifan lokal di Ternate berpotensi menghasilkan temuan temuan hukum adat yang belum pernah di kaji.

Perlindungan hukum melalui IPR

One of the traditional medicines that are efficacious in curing body aches, recovering women after childbirth, and broken bones is *Sou Kultidi* (medicine from red worms that inhabit banana stems) which is mixed in capsules (*sungara*). These capsules are cooked in water. After the water boils, *Sou Kultidi* is added with cinnamon, cloves, nutmeg, and *guraka*.

3.2 Analysis of Potential Registration of Intellectual Property Rights Related to Traditional Knowledge in Ternate City from 2019 to 2023

The implementation of IPR cannot be separated from the globalization of world trade which is marked by international conventions/agreements and the formation of international trade organizations such as *the* World Trade Organization (WTO). In the global order, IPR is seen as a trade issue that has a relationship between three important aspects, namely intellectual property, commercialization, and legal protection.²⁹ The state provides legal protection for IPR with the aim of preventing misuse of intellectual property rights by people who are not entitled to do so. Elements of IPR protection include:³⁰

Legal subjects consist of owners or rights holders, law enforcement officers, IPR registration officials, and law violators.³¹ Protected objects are all types of IPR regulated by law. Protective registration is an important element in IPR because protected IPR is limited to IPR that has been registered and proven by a registration certificate unless the law stipulates otherwise. Protection period. Each IPR has a protection period as determined in the regulating

²⁹ Rohaini and Nenny Dwi Ariani, "Positive Protection: Protecting Genetic Resources Related to Traditional Knowledge in Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 11, no. 2 (2017): 122–32, <https://doi.org/10.25041/fiatjustisia.v11no2.985>.

³⁰ Rohaini, "Perlindungan Hukum Terhadap Pengetahuan Tradisional Melalui Pengembangan Sui Generis Law; Legal Protection To Traditional Knowledge Through The Development Sui Generis Law," *Fiat Justisia Jurnal Ilmu Hukum* 9, no. 4 (2015): 438, <https://doi.org/10.25041/fiatjustisia.v9no4.609>.

³¹ Yudhitiya Dyah Sukmadewi, "Pendaftaran Merek Asosiasi Sebagai Merek Kolektif (Kajian Terhadap Asosiasi Rajut Indonesia Wilayah Jawa Tengah) (The Registration of Association Brands as a Collective Brand: An Analysis of the Indonesian Weaving Association of Central Java Area)," *Jurnal Ius Constituendum* 2, no. 1 (2017): 113, <https://doi.org/10.26623/jic.v2i1.547>.

law.¹³ Protective legal action. If it is proven that an IPR violation has occurred, the violator will be subject to criminal and/or civil sanctions.

The concept of IPR management includes two processes that interact with each other in one system, namely the process of developing an idea until obtaining an invention and then seeking legal protection and the process of commercializing the invention until gaining profits. In an effort to encourage increased invention and innovation, the government places greater emphasis on efforts to provide legal protection and commercialization.³²

At first glance, IPR registration is a form of concern and appreciation⁵² for the existence of the intellectual work of a person or group of people. Its benefits or usage will be obtained by the IPR owner.³³ However, to obtain IPR one must go through complicated and lengthy bureaucratic procedures that require inventors who will submit their intellectual work to have knowledge and understanding of the IPR. Besides that, the cost of the IPR application is also relatively expensive. This can be an obstacle to registering the nation's intellectual thought to IPR, especially commodities or products native to Indonesia, such as findings in the field of traditional knowledge.³⁴

When it comes to native Indonesian commodities, IPR protection, especially patents and brands, becomes very important, especially if these products¹⁰ can provide high economic benefits.³⁵ Referring to statutory regulations and conventions in the field of IPR, the legal protection provided for intellectual property includes the protection of patent rights (including simple patents),¹³ trade secrets, brands, industrial designs, protection of plant varieties, integrated circuit layout designs, geographical indications and indications of origin, as well as copyright.

However, no statutory regulations specifically regulate the matter of traditional knowledge. Thus, if traditional knowledge is to be recognized as intellectual work, the provisions in the field of IPR which are scattered in various laws apply. This situation is very unfavorable for local (customary) communities as owners of traditional knowledge to gain appreciation and benefits for the knowledge they possess, especially when viewed from the concept of IPR which has different requirements and standards with different characteristics or properties from traditional knowledge.

Registration⁵³ of Communal Intellectual Property (CIP) based on the Governmental Regulation No. 56 of 2022 includes administrative requirements for applications for CIP registration. Such requirements include at least request form for recording; description; Supporting data; video links, documentation, process/skill techniques, or manufacturing techniques; Written statement of support for protection, preservation, development, and utilization efforts signed⁴⁹ by the Regional Government and the Indigenous Community Association.

Concerning the registration of Intellectual Property Rights related to Traditional Knowledge from 2019 to 2023, in Ternate City, there is no traditional knowledge database

³² Rohaini and Ariani, "Positive Protection: Protecting Genetic Resources Related to Traditional Knowledge in Indonesia."

³³ Ivana Gabriella and Andriyanto Adhi Nugroho, "Akibat Kekosongan Hukum Terhadap Non-Fungible Token Sebagai Pelanggaran Hak Kekayaan Intelektual (The Impacts of Legal Void on Non-Fungible Tokens as the Violation of Intellectual Property Rights)," *Jurnal USM Law Review* 5, no. 2 (2022): 715, <https://doi.org/10.26623/julr.v5i2.5685>.

³⁴ S. Nugroho, "Protection of Intellectual Property Rights in an Effort to Increase Economic Development in the Era of the Asean Free Market," *Journal of Law Research on the Supremacy of Law* 24, no. 2 (2015): 3–4.

³⁵ E. V. T. Senewe, "Senewe, E. V. T. (2015). Efektivitas Pengaturan Hukum Hak Cipta Dalam Melindungi Karya Seni Tradisional Daerah," *Jurnal LPPM Bidang EkoSosBudKum* 2, no. 2 (2015): 12–23.

because the Ternate City regional government does not take inventory of such information. This condition has resulted in no registration for intellectual property rights related to traditional knowledge at the Regional Office of the Ministry of Law and Human Rights, North Maluku. From 2019 to 2023, there needed to be tactical steps from the Ternate City regional government to encourage city branding related to the use of traditional knowledge. Users must first provide information to indigenous communities regarding the purpose of using traditional knowledge. In an interview with Mr. Ignatius M. T. Silalahi, S.H., M.H., Head of the Legal and Human Rights Services Division (*Kadiv Yankumham*) of the Regional Office of the Ministry of Law and Human Rights North Maluku stated that:³⁶

"Ternate City Regional Government needs to encourage city branding related to the use of traditional knowledge, from just preservation to utilization and development originating from the Ternate community"

Commercial user groups and users for academic purposes are required to ask permission from traditional communities that have traditional knowledge. This permit application is a form of respect for the culture of this traditional community. In this regard, special regulations are urgently needed to regulate the implementation of licensing procedures for traditional knowledge users. If the use and utilization of traditional knowledge are carried out for commercial purposes, commercial and academic users are required to make a benefit-sharing agreement for the use of traditional knowledge with related parties, for example, the state, regional government or the indigenous community where the traditional knowledge originates.

Even though it is intended to reward inventors or creators of ideas, IPR for traditional knowledge is difficult to obtain because, in accordance with the nature of customary law, most traditional knowledge is common property discovered and used jointly by the community for generations. Meanwhile, a condition for obtaining invention patent rights is that the product must be new and no previous disclosure in any way and in any country is prohibited. In addition, there is a requirement that the to-be-patented invention must contain an inventive step (not foreseeable) and be applicable in the industry. These requirements are difficult to apply to traditional knowledge.³⁷

Traditional knowledge shows an inventive step that has become a public domain discovered and used by all citizens. It is collectively maintained and relatively open over a relatively long period of time. Therefore, it is easily accessible to other communities.³⁸ Thus, the characteristics of traditional knowledge which are communal, concrete, cash, and open are in contrast to the concept of IPR regulated in the law. In practice, the characteristics of traditional knowledge do not qualify as inventions that can be claimed for IPR when compared with Western IPR concepts. Unfortunately, such traditional knowledge is often utilized by other countries that have the expertise and high technology to modify, specify, and mix it in such a way, creating a new discovery that meets the criteria for IPR application.

³⁶ F. M. Lopes, "Penegakan Hukum Terhadap Pelanggaran Hak Cipta Di Bidang Musik Dan Lagu (Law Enforcement Against Copyright Violations in the Field of Music and Songs)," *Lex Privatum* 1, no. 2 (2013): 15.

³⁷ S. Margono, "Prinsip Deklaratif Pendaftaran Hak Cipta: Kontradiksi Kaedah Pendaftaran Ciptaan Dengan Asas Kepemilikan Publikasi Pertama Kali (The Declarative Principle of Copyright Registration: Contradiction of the Creation Registration Principle and the First Public)," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (2012): 237–255, <https://doi.org/10.33331/rechtsvinding.v1i2.99>.

³⁸ Margono.

2 If traditional knowledge with a touch of new innovation is patented, the economic benefits will only be owned and enjoyed by the IPR holder. Even as the original owners, traditional communities who want to reuse their traditional knowledge must go through certain procedures and are burdened with high costs. Its exclusive nature and its attachment to its owner creates a monopoly on IPR which allows foreign companies holding IPR to abuse their position to obtain as much profit as possible.³⁹ This clearly contradicts the philosophy of patent protection, namely encouraging discoveries.

This monopoly nature is contrary to the concept of communal and social ownership of the customary law. So, traditional knowledge is not solely controlled by the person or community who owns the intellectual property but is open to access by people outside of the community as well. 5 The communal nature of indigenous peoples who always prioritize common interests over their personal ones also becomes an obstacle or barrier that makes it difficult to apply IPR to traditional knowledge.

The issue of documenting IPR materials, especially the documentation of traditional knowledge, is a crucial thing which requires attention from various groups, both government and society. In accordance with its traditional nature, legal actions and legal relationships that occur in traditional societies are cash in nature, immediately completed when the action is carried out, and are simple.

As a consequence, actions in traditional societies generally become undocumented, even though these actions have accumulated over a very long time and have been preserved from generation to generation in the community. Complete documents on traditional knowledge can influence the success of formal IPR protection efforts. These documents serve as material for arguments or evidence in cases where other parties claim the traditional knowledge of a certain community.⁴⁰

In many cases, traditional knowledge owned by developing countries is often exploited by foreign parties by patenting similar inventions as developments of previously existing inventions. Even so, it is formally possible to innovate on previously patented inventions as long as they meet the elements of renewal and can be applied in industry. For inventors in developed countries with expertise, mastery of technology, and a very supportive budget, it is not difficult to carry out reform research based on ideas inspired by traditional knowledge. Although in this case, the owners of traditional knowledge receive compensation for the exploration of their biological natural resources, it is necessary to pay attention to the law that underlies the agreement between the owner of traditional knowledge and the party who will use local resources. This means that in efforts to protect traditional knowledge, it is not enough to align IPR legal instruments with the conditions and characteristics surrounding traditional knowledge. But the contract law related to agreements in the use of traditional knowledge also

³⁹ Ni Ketut Supasti Dharmawan, "Model Penguatan Perlindungan Kekayaan Intelektual Komunal: Transplantasi Muatan Kebijakan Termasuk Benefit-Sharing Berbasis Undang-Undang (Model of Strengthening Communal Intellectual Property Protection: Transplantation of Policy Content Including Law-Ba)," *Jurnal Ilmiah Kebijakan Hukum* 17, no. 2 (2023): 235–52, <https://doi.org/10.30641/kebijakan.2023.v17.235-252>.

⁴⁰ Tiara Putri Ramadhani and Dwi Desi Yayi Tarina, "Pelanggaran Hak Cipta Oleh Pelaku Usaha Karaoke (Copyright Violation by Karaoke Business Owners)," *USM Law Review* 6, no. 2 (2023): 606, <https://doi.org/10.26623/julr.v6i2.7239>.

needs to be aligned so that local communities² as the original owners of traditional knowledge receive respect and economic benefits.⁴¹

Defensive protection is an effort⁵ aimed at preventing the granting of IPR to traditional knowledge by other parties without the knowledge and permission of the traditional knowledge owner.⁴² Such protection can be an effective policy to prevent the granting of intellectual property rights to unauthorized parties. However, this does not automatically stop the misappropriation/biopiracy of traditional knowledge. National law is needed to support the implementation of this policy, as positive law is the main mechanism in efforts to protect and provide benefit-sharing for traditional knowledge owners. Positive protection can be carried out through two forms of legal action, namely by making better use of laws related to intellectual property rights or through the establishment of special laws related to traditional knowledge (*sui generis law*).⁴³

From these perspective, authors had in-depth analysis the government could do many things to prevented this. The government could supported the IPR for indigenous Knowledge by by collecting data on indigenous communities about traditional knowledge and after the data collection is carried out and a traditional knowledge is found, they are provided with assistance in the IPR application process. The government should also stipulate regulations regarding the permissibility of canceling an IPR if it is proven that the applicant stole the idea from the traditional knowledge of indigenous peoples

Researchers provide insight into efforts to protect traditional knowledge so that it is maintained in several ways: a) to create a system for preserving, protecting, and developing traditional knowledge in Indonesia; b) to protect the rights of indigenous peoples in particular and/or owners of traditional knowledge in general; c) to develop the capacity of communities holding traditional knowledge in Indonesia d) to increase national innovation capabilities based on the use of traditional knowledge; e) to ensure the development of a system with access and profit sharing for benefits arising from the balanced and fair use of knowledge.

Considering that the subject of traditional knowledge is very broad, including art, architecture, medicine, etc., it is crucial to define the scope and limits of protection. In general, the scope of protected knowledge includes knowledge that; a) is formed, preserved, and transmitted between generations; b) has special characteristics related to preserving traditional communities; and c) is integrated with the culture of a particular society through ongoing habits. In line with the matters above, the draft Law on Traditional Knowledge and Traditional Cultural Expressions has tried to formulate the intended limits of protection. However, the formulation of the contents of the articles related to this matter cannot yet be said to be complete. However, there are two alternatives to offer.⁴⁴

Alternative 1: The protection of traditional knowledge and traditional cultural expressions includes cultural elements that: are compiled, developed, maintained, and passed

⁴¹ Sulasi Rongiyati, "Hak Kekayaan Intelektual Atas Pengetahuan Tradisional (Intellectual Property Rights Over Traditional Knowledge)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 2, no. 2 (2016): 213–38.

⁴² Dina Karlina, "The Legal Protection of Ngajat Lesung Dance as a Copyright for Traditional Cultural Expressions," *USM Law Review* 6, no. 2 (2023), <https://doi.org/10.26623/julr.v6i2.7334>.

⁴³ Rohaini, "Perlindungan Hukum Terhadap Pengetahuan Tradisional Melalui Pengembangan Sui Generis Law; Legal Protection To Traditional Knowledge Through The Development Sui Generis Law."

⁴⁴ Rohaini.

11 down as a tradition; and have special characteristics as the cultural identity of the particular community that preserves it;

Alternative 2: Protected traditional knowledge as intended in paragraph, includes ideas/thoughts, concepts, skills, learning methods, customary 11 practices, and other innovations that shape the lifestyle of traditional communities, including medical knowledge related to medicines and healing procedures, knowledge about space and time, agricultural knowledge, knowledge of the natural environment, knowledge of flora and fauna, knowledge of substances and raw 16 materials, knowledge of body anatomy, knowledge of astronomy, as well as knowledge related to 10 genetic resources.

One of the objectives of protecting traditional knowledge is to ensure the profit distribution for knowledge owners. However, in practice, this is not that simple. An important issue that must be considered is who, how, and why a party is considered to be the owner of traditional knowledge based on *sui generis* legal regulations. In certain cases, sometimes someone creates traditional knowledge, for example, traditional medicine, without involving traditional communities. In other cases, traditional knowledge is also often owned by several community members in a community group.⁴⁵

This knowledge is inherited and acquired by certain individuals in an indigenous community. The final possibility is that traditional knowledge is 16 known by almost all members of a community group (common knowledge), even known by those outside of that community group. In the latter case, if there is difficulty in identifying who owns the knowledge as the knowledge is jointly known and/or owned by various groups of indigenous peoples, then the position as owner of the knowledge is replaced by the state.

By understanding these conditions, it is very necessary to have provisions that are able to confirm and/or identify who owns traditional knowledge. On this basis, the implementation of procedures for granting rights is carried out by aligning the provisions between *sui generis* regulations and regulations 17 relating to intellectual property rights. The implementation of procedures for granting rights is carried out by harmonizing the rules in *sui generis* regulations with other regulations such as the Regulations of the Minister of Law and Human Rights, especially those 25 related to the field of communal intellectual property.

4. CONCLUSION

The most feasible way for the Indonesian government to protect traditional knowledge now is to strengthen the database on traditional knowledge. In this regard, special regulations are urgently needed that regulate the implementation of licensing procedures for users of 2 Traditional Knowledge. Concerning the analysis of potential registration of intellectual property rights related to traditional knowledge from 2019 to 2023 in Ternate City, no traditional knowledge database has yet existed. On this basis, there needs to be tactical steps from the Ternate City Regional Government in encouraging city branding related to the use of 5 Traditional Knowledge. Indonesia has an abundant amount of traditional knowledge from its hundreds of ethnic groups that need to be legally protected. This paper contributes to science as it provides knowledge on how to legally protect this valuable knowledge. As acknowledgement 45 authors would like to thank Universitas Khairun Ternate for its research funding.

⁴⁵ Rohaini.

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