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Research Paper

Legal Protection of Communal Intellectual Property Rights In Supporting the Development of Law and the Creative Economy in Indonesia

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Abstract
TheUnitaryState oftheRepublicofIndonesia isanarchipelagocharacterizedby anarchipelagowith a territorywhoseboundariesandrightsareestablishedbylaw.The regulation thatanalyses theproblem,namelyintellectualpropertyprotection, doesnotyethaveitsRegulation (Law), whichonly containsPresidentialRegulation Number56 of2022 on communal intellectualpropertyandregulationoftheMinisterofLawandHumanRightsoncommunal intellectualpropertyDataNumber13of2007.Provisionsonintellectualpropertyclassified inArticle38 paragraph (4)ofLawNo. 28of2014 onCopyrightmean that traditionalculturalexpressionsare traditionalheritage produced, developed,and maintainedbylocalcommunitiesintheformof intellectualworksinthefieldof art. The purpose of this study is to examine and analyze the application of the principle of legal protection for Communal Intellectual Property based on the Copyright Law and the Government's strategy in providing legal protection for communal intellectual property in supporting the development of law and the creative economy in Indonesia as well as the ideal concept of legal protection for communal intellectual property to support the development of law and the creative economy in Indonesia. Thisstudy isdescriptivebecause itdescribes thelegislation in forceandisassociatedwiththe theoriesoflaw inpractice relatedto theimplementationof theproblemsthat willbeexaminedthroughthis methodas well, and willdescribe/describethe facts thatoccurasa reflection of the implementationofthelegislationandtheprinciplesoflawassociatedwith thetheoriesof lawandpracticeofitsimplementation.
Basedon theresultsofresearchanddiscussion,it canbeconcludedthatcommunalintellectualproperty arrangementshavebeenregulated internationally.Itcanbeseenhow thestatehasprotectedtheseindigenouspeoplesby followinginternationalagreements since theseagreementsbenefit them. Internationally,it has notreceived goodattention,becauseitisstillintheform of intellectualproperty regulation ingeneral.Thereare twoworldorganizations related to intellectualproperty, namelythe WorldIntellectualPropertyOfficeand theWorldTrade Organization.TRIPssetlimitsformemberstatesin drafting legislationto protect intellectualproperty.Therefore,Indonesianlegislation onintellectualpropertymustalso refertotheTRIPSAgreement.Indonesia isexplicitlyboundbytheTRIPsAgreement because ithas ratified the agreement, soIndonesia is obliged to harmonize theIntellectual Property Law systemaccordingto the standards setout inthe TRIPs Agreement.

Keywords: *Legal Protection, IntellectualProperty Rights, Creative EconomicDevelopment*

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I. Introduction

The Republic of Indonesia and its contents have an interest in developing policies for the management of Traditional Cultural Expressions, Geographical Indications, Traditional Knowledge, and Genetic Resources to maintain the integrity and unity of the nation from theft, piracy, recognition from other parties and/or

countries and fulfill the sovereign rights of the community, including the Customary Law Community which plays a role in its governance and protection.

To support the development of the creative economy and legal protection of communal intellectual property, training is needed to realize the welfare of the community. The Unitary State of the Republic of Indonesia is an archipelagic country with archipelago characteristics with territories whose boundaries and rights are determined by law.

Traditional knowledge covers various fields of Intellectual Property Rights. Fields that cover the scope of communal intellectual property are folklore which is a traditional cultural expression manifested in cultural products, genetic resources, geographical indications, and indications of origin. Folklore includes traditional music, traditional narratives and literature, traditional arts, traditional crafts, traditional symbols/names/terms, traditional performances, and traditional architectural arts.

Traditional knowledge can also include industrial designs related to the production of handicrafts characterized by traditional culture. Efforts to protect Indonesian traditional knowledge are still unclear. There are still many legal issues related to the "theft" of Indonesian traditional knowledge by other countries following the applicable Intellectual Property Rights system mechanism. The Republic of Indonesia consists of 17,508 islands stretching from Sabang to Merauke. The expanse of islands in the Republic of Indonesia contains abundant biodiversity (mega-diversity country) and cultural wealth (mega-cultural diversity). Supported by Traditional Cultural Expressions, Geographical Indications, Traditional Knowledge, and Genetic Resources, Indonesia has local cultural wisdom and customary law communities as sources of the environment.

Based on this, it is undeniable that Traditional Cultural Expressions, Geographical Indications, Traditional Knowledge, and Genetic Resources are part of a unity that plays an important role in protecting the state to combat theft, piracy, and recognition from other parties and/or countries. The development of the Indonesian state management policy above is very important and has been stated in the 1945 Constitution of the Republic of Indonesia, referring to Article 20, Article 22D paragraph (1), Article 28C paragraph (1) and (2), Article 28H paragraph (1), Article 28I paragraph (3), Article 32 paragraph (2), and Article 33 paragraph (3) and (5) states that Traditional Cultural Expressions, Geographical Indications, Traditional Knowledge, and Genetic Resources are slices of national and state sovereignty, and are strategic resources because they bind the interests of the public in Indonesia and are controlled by the state to link the welfare of the people.

The existence of the provisions above first explains that the state of Indonesia has its legal territory as an independent and sovereign state. Second, this article also explains that the legal territory of the state of Indonesia, and the boundaries and rights contained therein are regulated by law. This means that the government and anyone else may not add to or reduce the territory of the state without the consent of the people as stated in the law. Third, the determination of territorial boundaries and their rights in the law should also not be understood as unilateral without regard to the norms applicable in Indonesia. The regulation that is the subject of the problem analysis, namely Intellectual Property Protection, does not yet have its regulation (Law), which only contains Presidential Regulation Number 56 of 2022 concerning Communal Intellectual Property and Regulation of the Minister of Law and Human Rights concerning Communal Intellectual Property Data Number 13 of 2007. Provisions on Intellectual Property are included in Article 38 paragraph (4) of Law Number 28 of 2014 concerning Copyright, which means that traditional cultural expressions are traditional heritage produced, developed, and maintained by local communities in the form of intellectual works in the field of art.

Traditional cultural expressions in Article 38 paragraph (1) of Law Number 28 of 2014 are those that include one or a combination of all types of arts and literary works such as music, movement and dance, prose, drama, theater, all types of fine arts and the last is traditional ceremonies. Tracing the long journey of history, the country of Indonesia which has Traditional Cultural Expressions, Geographical Indications, Traditional Knowledge, and Genetic Resources is also involved and plays a central role in world political relations, where Indonesia has adopted the Convention on Biological Diversity, the UNESCO Convention, and the Nagoya Protocol. With the background of the problems above, it is felt necessary to build a strategic system regarding Communal Intellectual Property which then has the intention and purpose to fix, develop, empower, and utilize in the framework of protecting national wealth and unity assets as capital for sustainable government development, especially for the welfare of the Indonesian people based on the 1945 Constitution. However, in reality, the current condition of Communal Intellectual Property is in the form of data that can weaken the sovereignty of Communal Intellectual Property, weaken/complicate the proof of ownership, is prone to piracy/theft and is recognized by other countries, and can also reduce the love of the next generation for Communal Intellectual Property. The forms of data in question are:

1. Some have not been recorded;
2. Some are still in paper/manual form and closed;
3. Some data is already in digital form (cannot be accessed);
4. Some data is already in digital form and can be accessed;
5. Data is still partial in each Ministry/Institution (Ministry of Education and Culture, Ministry of Agriculture, Indonesian Institute of Sciences and Directorate General of Intellectual Property).

6. Data formats are diverse and not standardized.
7. Still relatively difficult to access.
8. There is no national data center yet.

The condition of the data as mentioned above has worsened the Communal Intellectual Property itself, where some Communal Intellectual Property has been pirated/stolen and recognized by one country, namely Malaysia. Malaysia has recognized and used Indonesia's Communal Intellectual Property in commercial matters, namely: The tor-Tor Dance, Gondang Sembilan Dance, Pendet Dance, and Angklung. The data on theft/piracy and recognition of Communal Intellectual Property above is just a small example that is already known. There are likely many more Communal Intellectual Properties that have been stolen/pirated and recognized by other countries. The theft, piracy, and recognition by the two countries that have been described show that the Indonesian state does not or has not yet had sovereignty over communal intellectual property. Therefore, standardized digital Communal Intellectual Property data must be built and published nationally and easily accessible, so that it can strengthen the sovereignty of Communal Intellectual Property, provide early warning to parties who will exploit it illegally, and strengthen proof of ownership in the event of a dispute.

II. Literature Review

Plato's Theory of Justice

This theory is used as a Grand theory in compiling a dissertation, Plato defines justice as the supreme virtue of the good state.3 A just person is a person who controls himself and whose feelings are controlled by reason. For Plato, justice and law are the general spiritual substances of a society that create and maintain its unity. In a just society, everyone does the work that is most suitable for him according to his basic nature. Plato's opinion is a conception of moral justice that is harmony. Justice arises because of the arrangement or adjustment that gives a harmonious place to the parts that form a society. Justice is realized in society when each member does the best according to his ability and the function that is in harmony with him. The role of officials is to distribute functions in the state to each person following the principle of harmony. Everyone does not interfere with tasks and affairs that are not suitable for him. Interference with other parties who carry out tasks that are in harmony will create conflict and disharmony, and both of these things are the essence of injustice.

In the context of law in Indonesia, Plato's and Aristotle's theories of justice have an important influence. Law in Indonesia, like in many other countries, is based on the principles of justice and equality. The influence of Plato, Plato's theory of justice, which states that justice is created when each individual plays their role in society and does not interfere in the affairs of others 1, can be seen in the Indonesian legal system. For example, in the Indonesian Constitution, there is a principle that every citizen has the same rights and obligations. This reflects Plato's concept of justice, where each individual has a role in society.

Welfare State Theory

The grand theory used is the welfare theory which states that a legal state is generally interpreted as a government-run based on legal principles. However, it turns out that two major concepts underlie the implementation of a legal state in the world. The first concept is Rechtsstaat and the second concept is the Rule of Law. Along with the development of society and the state, the principles of the legal state have also developed. The concept of a formal legal state above is considered outdated and then changed, namely with the emergence of the concept of a material legal state in the 20th century. A material legal state called a welfare legal state (welvaartsstaat or verzorgingsstaat) not only deals with the problem of providing guarantees to individuals so that they can exercise their political rights, but also covers various aspects of life, namely politics, economy, society, culture, and so on. The concept of Rechtsstaat was born from the Continental European legal system and then developed in Germany and the Netherlands. This concept aims to improve and limit the function of state policy implementers and administrative officials so as not to violate the basic rights of every citizen.

Another concept, namely the Rule of Law, is based on the principle that the highest power is held by law. The concept began to develop in England and was born in the implementation of the Anglo-Saxon legal system that is still in effect. The institutions targeted in this concept are slightly different from Rechtsstaat, namely to improve and enhance the various roles of legal institutions and courts to enforce regulations and protect essential human rights.

A legal state that adheres to the Rule of Law concept has the principle that what the state does for its citizens is limited by law. The concept that developed during the Anglo-Saxon era is also widely known as the common law system. This system applies in England, along with countries that were colonized by England at that time, such as the United States, Canada, Australia, Malaysia, and Singapore. Until now, many of these countries still apply the principle of the Rule of Law in their legal systems.

Legal Protection Theory

A system is a unit that works within definable limitations. The nature of a system can be something organic or social. Examples of the manifestation of the system that can be found include in the human body, game machines, to religious institutions such as those run by the Roman Catholic Church. However, for the political system, David Easton provides a separate definition as "a collection of interactions that maintain certain boundaries with inherent properties and are surrounded by other social systems that continuously influence them. This definition is based on a specific basic concept. The political system is called a "set of interactions" - which means a social system, or in this case not a frame or machine, but consists of behavior. One behavior is related and connected to other behaviors. The boundaries of the legal system must be distinguishable from other social systems. There are certain starting and ending points that bind this system. The term legal is indicated to be related to law. Therefore, to describe a legal system, an operational definition is needed regarding this. Legal philosophers and social scientists have jointly provided so many definitions and understandings regarding this system. From the various definitions of law stated by experts, the understanding of this system can be classified into several groups. These groups of definitions reflect different perspectives on law and different goals in interpreting the law itself.

Theory of Development Law

Middle-range theory using the theory of development law was initially introduced by Mochtar Kusuma-Atmadja. This theory was born through labeling by legal experts because Mochtar himself never mentioned this theory directly in his written works in the field of law. Mochtar called the concept introduced in 1970 a normative sociological concept, in his writing entitled "Development of National Legal Philosophy. However, in a direct interview with an author, Mochtar verbally emphasized that he preferred if his theory was given the title "Theory of Development Law". The theory of Development Law is often associated with Mochtar's other writings which also discuss national law. The three writings that are most often associated are (1) Function and Development of Law in National Development, (2) Legal Development in the Framework of National Development, and (3) Law, Society, and National Legal Development.

Intellectual Property Rights Theory

The theory applied in this dissertation uses the theory of Intellectual Property Rights, this theory can be studied through various perspectives, both in terms of economics, politics, global economy, and of course from a legal perspective. Intellectual Property Rights from an economic perspective can show that intellectual property rights are objects of wealth that can present transactions in the process of exchanging human economic needs. When viewed from a political aspect, Intellectual Property Rights can be a tool for developed countries to influence many developing countries, including Indonesia. The discussion of Intellectual Property is even included in the main issues discussed by the world body World Trade Organization (WTO). This then gave birth to The Agreement 'on Trade-Related Aspects of Intellectual Property Rights.' The study of Intellectual Property Rights is now also attracting a lot of attention from academics and legal experts so the legal view of Intellectual Property Rights is becoming more dominant among legal scientists. This dominance is evident in the curriculum of legal education in law faculties at many universities today. Learning legal science at the university level even includes a discussion of Intellectual Property Rights as a series of compulsory courses. This has not been found in other closely related sciences, such as political science and economics, thus further demonstrating the firmness of the dominance of legal science in studying Intellectual Property Rights.

Learning about Intellectual Property Rights covers many things in all fields of work, starting from the most widely known, namely, copyrights, patents, brands, industrial designs, and integrated circuits, to cultivated plant varieties. In addition to covering multidimensional aspects, Intellectual Property Rights are often translated into many terms in various references. Based on the scope of academic studies, there are many terms and those that do not follow the material group.

III. Research Methods

This research will use a qualitative research approach through a literature study method. This approach involves an in-depth analysis of existing literature and legal documentation relevant to the politics of communal intellectual property law in Indonesia.This approach involves a study of literature, such as law books, journal articles, and legal documents, to understand the applicable legal theories and principles, and how they are applied in the context of communal intellectual property. Overall, this qualitative research approach will help in providing a more comprehensive and in-depth picture.

Data processing is carried out based on the Miles and Huberman interactive data analysis model. After the primary and secondary data are collected, the next step is to process the data by reducing the data, namely simplifying, classifying, and deleting unnecessary data. This data processing technique is carried out to obtain the necessary data and draw conclusions. Because the amount of data is large and complex, the data needs to be

processed through the data reduction stage.Data processing in this study was carried out after the primary and secondary data related to the problem of low adoption of IP were collected. After the data was collected, the data was simplified, and classified and unnecessary data was deleted so that the necessary data could be obtained and conclusions drawn.

This study uses the Miles and Huberman interactive data analysis model. The Miles, Matthew B. and Huberman, (1994) interactive data analysis model describes a written or visual theoretical outline that describes in graphic or narrative form the main points that will be the joint factors, conceptions, or variable units and synergies that are interrelated with research problems and problem formulations and research objectives. Based on the focus of the research conducted, the use of purposive sampling techniques is intended to obtain and obtain actual data through informants who have been determined by the researcher, based on the assessment that the person concerned has the competence to help researchers provide important data processing studies needed to be able to complete the information collection period. In research based on the purposive sampling technique, the mapping carried out by the researcher is based on the understanding and competence of informants related to the implementation of intellectual property policies in terms of Communal Intellectual Property**.**

IV. Research Results

In its implementation, Intellectual Property is a personal right protected by constitutional law. The purpose of protecting Intellectual Property is to safeguard human interests, dignity, and respect for human rights owned by individuals or legal entities. Intellectual Property protection is closely related to human rights, therefore laws and regulations have been made to provide such protection. Protection of Intellectual Property is a manifestation of the enforcement of human rights. In the context of Indonesia, the protection of Intellectual Property is truly based philosophically on Pancasila, the foundation of the Indonesian state, legally based on the 1945 Constitution, and sociologically refers to the culture and order of life of Indonesian society.

In this regard, the purpose of protecting Intellectual Property is to provide recognition for the results of the creativity of individuals or entities that innovate.

Other laws and regulations governing Communal Intellectual Property include Law Number 5 of 1994 concerning the Ratification of the United Nations Convention on Biological Diversity, Law Number 11 of 2013 concerning the Ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity. This Government Convention on Biological Diversity is intended to unify the various provisions required as a legal basis in implementing the inventory of Communal Intellectual Property which includes Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, Indications of Origin, and Potential Geographical Indications.

The substantial problem of the inability of the Conventional Intellectual Property Rights system to provide optimal protection for community-based property is due to the lack of originality or novelty, and the lack of legal recognition of the existence of values other than individual moral values. and economic value, as well as the absence of a strong legal basis to accommodate non-individual rights holders, other than Collective Trademarks, Geographical Indications, and Indications of Origin. Most of Indonesia's cultural and traditional wealth is held by communities, both customary law communities, traditional communities, and local communities.

The successful implementation of the Regulation of the Minister of Law and Human Rights Number 13 of 2017 (Permenkumham 13 of 2017) which protects digital data from Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, and Potential Geographical Indications, as well as the latest implementing regulations, namely Government Regulation Number 56 of 2022 (PP 56 of 2022) concerning Communal Intellectual Property, is a legal milestone. Although still in the form of implementing regulations, the contents of both. These regulations have laid a strong legal basis for the defensive protection of Communal Intellectual Property, namely for: Genetic Resources, Traditional Knowledge, Traditional Cultural Expressions, Geographical Indications, and Indications of Origin.

This defensive protection is carried out through the procedure of creating and integrating related databases that already exist in Ministries and Institutions, into one integrated database that will be used to defend existing rights in all Communal Intellectual Property regimes. To maintain these defensive rights or protection, the Ministry of Law and Human Rights, especially the Directorate General of Intellectual Property, is the leading sector leading the negotiations. The advantage of defensive protection through this database is that digital data has a special protection jurisdiction that is different from other Intellectual Property Rights regimes which generally have territorial jurisdiction or the sovereign boundaries of the Republic of Indonesia. As digital data, objects of protection of Communal Intellectual Property are regulated through Article 25 of the Law of the Republic of Indonesia concerning Number 11 of 2008 concerning Electronic Information and Transactions with its Amendment through Law of the Republic of Indonesia Number 19 of 2016 (UU ITE).

Article 25 of the ITE Law makes digital data protection enjoy extra-territorial jurisdiction. Protection with extra-territorial jurisdiction means that if the perpetrator of a violation of Communal Intellectual Property data is in another country, as long as the consequences of the violation cause losses in Indonesia and affect objects in Indonesia, the violation can be processed according to the laws applicable in Indonesia. Article 3 and Article 5 of PP 56 of 2022 indicate the specificity of this Regulation relating to the responsibilities of the guardians or maintainers of Communal Intellectual Property regimes. Article 3 Paragraphs (1) and (2) of PP 56 of 2022 state that the rights to Communal Intellectual Property are held by the State and that the State is obliged to inventory, maintain, and preserve Communal Intellectual Property. This article stipulates that the responsibility of the guardian of Communal Intellectual Property is held by the State. The reason for the presence of this State comes from the theoretical legal proposition, that specifically for Communal Intellectual Property, the rights contained therein are part of 'traditional rights' as stated in the 1945 Constitution (UUD 1945) Article 18B concerning the State's recognition and respect for the unity of customary law communities and their traditional rights, as well as UUD 1945 Article 28 I Paragraph (3) concerning 'traditional community rights' which are part of human rights. As a constitutional right as well as a human right, referring to Article 28 I Paragraph (4) of the 1945 Constitution, its protection, advancement, enforcement, and fulfillment are the responsibility of the State, especially the Government. This means that the State is obliged to be present as a guardian.

Article 5 of PP 56 of 2022 on the other hand firmly states that the right to Communal Intellectual Property'... is an inclusive moral right, which is maintained and/or carried by the Community of Origin, which has economic benefits, and is valid without a time limit. Following Article 18 B and Article 28 I Paragraph (3) of the 1945 Constitution, Article 5 of PP 56 of 2022 reaffirms that the right to Communal Intellectual Property originates from and remains held by the Community of Origin. The presence of the State in this context is to be a guardian, maintainer, as well as facilitator and dynamist for the community of origin to become a guardian and/or bearer of strong and quality Communal Intellectual Property rights. The presence of the State is also significant in regulating, mediating, and maintaining Communal Intellectual Property which is cross-community, cross-regional, or even cross-country.

Problems of Legal Norms. The occurrence of internal and external conflicts. The internal conflict is a dispute over norms in one law, such as norms governing traditional cultural expressions contained in copyright law, then laws governing geographical indications contained in trademark law, and traditional knowledge contained in patent law. All existing norms are norms that regulate Intellectual Property individually, while what is regulated there is also Intellectual Property that is communal in nature so that it will cause disputes within the norms themselves internally. Externally, there are disputes between norms in several rules governing Intellectual Property, for example, the TRIPs Agreement which is difficult to harmonize with national law, while legally the TRIPs Agreement has become national law through Law No. 7 of 1997. The TRIPs Agreement which has a more liberal economic dimension on individual property rights is a reference in implementing regulations in the field of Intellectual Property in Indonesia which cannot simply recognize Intellectual Property individually but also Intellectual Property communally from traditional communities. The Intellectual Property legal system allows protection for works of creation owned by a group of people. One type of Intellectual Property is Geographical Indication. The legal regime of geographical indications can protect a creation or product produced by a community in a certain geographical area.

The Concept of Communal Intellectual Property Protection Through Registration and Preservation

Registration of traditional knowledge and other forms of communal Intellectual Property is another way to open up knowledge owned by indigenous people. Through this registration, the owners of traditional knowledge and other forms of communal Intellectual Property reveal and pour their knowledge into a format specifically designed by another party. Therefore, 3 (three) things must be the basic principles of the registration, namely:

a) The Principle of Voluntaryism. Opening up knowledge to others is one of the normative modes that arises from the property rights of knowledge. The owner of the knowledge has the normative authority to open it or not. Therefore, to compile knowledge in a database requires permission from the owner. On the other hand, efforts to register knowledge without the owner's permission, in addition to violating the owner's rights, also contradict the purpose of the data collection, namely to protect traditional knowledge.

b) b. The Principle of Confidentiality. Ownership and control of information are two things that cannot be separated. Once knowledge is given to another party, at that time the owner can no longer control it effectively. Traditional knowledge that is opened by its owner to be included in a database can only be controlled by the owner as long as the confidentiality of the database can be guaranteed. Therefore, the principle of confidentiality must be the basis for registering traditional knowledge so that the owner still has effective control over the knowledge.

c) Principle of Appropriateness. The use of the database must follow the principle of appropriateness. The measure of appropriateness is referred to the purpose that is the basis for creating the database. There are two models of database registration, namely:

First, Registration of traditional knowledge as 'Prior Art'. Registration of traditional knowledge in a database functions as prior art, namely knowledge that is already known by many people. The goal to be achieved through this registration is so that other people no longer use traditional knowledge to obtain Intellectual Property rights such as patents. Thus, this is a form of defensive protection.

Second, Registration of traditional knowledge as an intangible cultural heritage. This registration model aims to preserve traditional knowledge. This model is designed based on the UNESCO Convention for the Protection of Intangible Cultural Heritage in 2003, (The Convention for The Safeguarding Intangible Cultural Heritage). Article 1 of the 2003 UNESCO Convention states that the purpose of this convention is to; a) protect intangible cultural heritage; b) ensure respect for the intangible cultural heritage of the various communities, groups, and individuals concerned; c) raise awareness, both at the local, national and international levels, of the importance of intangible cultural heritage, and ensure mutual respect for such cultural heritage; d) provide international cooperation and assistance.

As a country that has ratified the 2003 Convention, Indonesia should: Protect all intangible cultural heritage in Indonesia through identification, inventory (recording of intangible cultural heritage), research, and preservation (maintaining); promote the origin of not being uprooted from its cultural roots; transmit culture through early childhood education (family, playgroups), out-of-school education (studios, associations, courses), and formal education (basic university education) and involve communities, social groups and individuals.

The method of preserving traditional knowledge applied in this convention tends more towards ex-situ preservation. As applied in Article 3 (3) of the 2003 UNESCO Convention. As with the previous registration model, knowledge registered through this mechanism also results in becoming public knowledge. Because every knowledge registered through this mechanism is published to the public.To implement this Convention, there are two forms of intangible cultural heritage preservation mechanisms including traditional knowledge, namely protection at the national and international levels. Each country has obligations at each of these levels.

The protection model is Sui generis positive protection.

The concept of protection of Communal Intellectual Property required by traditional communities is a positive protection model based on Customs and local wisdom using two approaches, namely:

1. The rights-based approach no longer uses a law-based approach, meaning that the government does not always deny the laws that apply to Indigenous communities, the government must also encourage prevention efforts with good interaction in fighting all forms of deprivation of the rights of traditional and communal Indigenous communities.
2. A persuasive approach to the local indigenous community. Persuasively, how to foster trust to strengthen, shape, and change the perspective of traditional community groups so that they also play a role in protecting Communal Intellectual Property.

Customary law or customary law can be an alternative source or material for formulating the rights of local communities in sui generis laws on Communal Intellectual Property. This sui generis law must have a different purpose from the purpose to be achieved by tangible regulations. This sui generis law must explicitly provide recognition of the rights of the owners of Communal Intellectual Property, namely customary law communities. Because customary law is one of the important elements of sui generis protection.

V. Conclusion

1. Communal Intellectual Property Regulations have been regulated internationally. Indonesia is explicitly bound by the TRIPs agreement because it has ratified the agreement, so Indonesia is obliged to harmonize the Intellectual Property legal system according to the standards set out in the TRIPs agreement. This step was taken by Indonesia in the context of legal transformation as an improvement of international law through national law, and it has been done by Indonesia by ratifying various provisions in international agreements related to Communal Intellectual Property. In addition to international legal instruments, the existence of Communal Intellectual Property has also been guaranteed constitutionally and several regulations through other national legal instruments. Communal Intellectual Property has long been found in living practices in Indigenous communities whose existence has been constitutionally recognized.
2. The government has made many communication efforts both above the line and below the line, especially through regional offices. However, what needs to be seen later is that this communication has an impact not only through. Communication through all lines that have been carried out certainly requires more frequency. For example, socialization both through the media and directly is certainly not enough in one regional office to be carried out once or twice a year. This means that the Directorate General of Intellectual Property must increase the frequency or intensity of communication during this time, especially in Regional

Offices. The next factor is Reach. In addition to the general audience segment, the Directorate General of Intellectual Property can ask regional offices to determine the audience segment that is Niche or niche market. This means that communication about Communal Intellectual Property must start to be more intense to custodians and also prospective custodians with the potential for Communal Intellectual Property. Of course, niche market segments will be quite varied and require special communication treatment, and of course, require a lot of money. However, intense communication with custodians will help them better understand Communal Intellectual Property. Another important factor is the Message conveyed. After the general Message is chosen, the selection of the message will depend heavily on the selection of the audience segment. Another factor is the direct communication channel. The Directorate General of Intellectual Property must empower legal counselors and KI centers in regional offices with sufficient budgeting to be able to reach custodians and the special communities mentioned earlier. That is why budget politics for communication must be an option. The Directorate General of Intellectual Property must realize that in the private sector, media spending on advertising with the goal of only building or managing a Brand can require a fairly large percentage of the budget.

3. The Ideal Concept of Communal Intellectual Property Protection requires positive law to support the policy of protecting Communal Intellectual Property as the main effort to save the rights of the community of Communal Intellectual Property owners to obtain economic benefits through fair profit sharing from its use by external parties. Several alternatives can be used as a concept for protecting Communal Intellectual Property, including protection with positive law that is specifically formed. This positive law will be used in the long term as a step and effort to fight for national interests by creating national laws and regulations that also regulate international issues. Matters that are specific to certain fields related to Communal Intellectual Property can no longer refer to general Intellectual Property conventions or regulations, they should be regulated specifically.

VI. Suggestions

The harmonize Intellectual Property regulations with the substance regulated in the Communal Intellectual Property regulations, to obtain legal certainty in its implementation by optimizing legal instruments. It is necessary to immediately have regulations that specifically regulate the rights of indigenous peoples which include Communal Intellectual Property rights, it is suggested that the regulation of Communal Intellectual Property is no longer forced through Individual Intellectual Property regulations or existing Intellectual Property regulations.

1. Protection of communal Intellectual Property aims to provide welfare for traditional communities, vulnerable communities whose existence is very much needed in accelerating national development. Communal Intellectual Property intersects with many people who live communally in a community, so a regulation is needed that can ensure to reach of the rights of Communal Intellectual Property owners. Regulations are needed that are based on justice to provide benefits to the wider community.
2. A need to construct customary law norms in special protection rules that regulate the protection of the Communal Intellectual Property of traditional communities, without ignoring the values that live in customary law communities, namely simple, dynamic, without ignoring religious values. Good cooperation is needed between various parties because the four components at once are combined into Communal Intellectual Property, it is not an easy step to provide protection both defensively and positively.

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