



Increasing Intangible Assets Value for the Balinese Community Through the Protection of Communal Intellectual Property of Traditional Cultural Expressions and Geographical Indications

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Abstract. Comparatively speaking to other forms of intellectual property, which are owned exclusively by individuals, communal intellectual property is owned by groups. Since culture is what gives a group or community its identity, communal intellectual property is a traditional cultural heritage that must be protected. A geographic indication is a sign that identifies the place of origin of goods and/or products that have certain qualities, a good reputation, and particular characteristics because of human, natural, or a combination of environmental factors in their geographical environment. Traditional cultural expressions, on the other hand, are the product of an indigenous peoples' intellectual creativity that has the potential to be traded and has (potential) commercial value. Rich in culture and natural resources, Bali has the potential to grow in value through the protection of shared intellectual property, which will benefit the welfare of the Balinese people even more. Because legal science is normative in nature, this article employs normative legal research methods. This research's methodology includes analytical, descriptive, and In order to get the desired study outcomes, a qualitative examination of legal materials is conducted.

Keywords: community welfare, bali, protection, communal intellectual property.

1 Introduction

Among the nations with the largest archipelagos worldwide is Indonesia. Rich traditional knowledge and traditional cultural manifestations are among the cultural resources found in Indonesia, which also boasts a vast range of geographical conditions and customs. Geographical circumstances as well as the diversity of cultures and customs are significant factors in the process of producing goods with distinctive qualities. Indonesia is still working to provide the best possible framework for maximizing the economic worth of regional goods [1]

The existence of regional dances and dialects, as well as customary attire and rituals, are a few examples of cultural expression. Knowledge and abilities from the

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M. Umiyati et al. (eds.), *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, Advances in Social Science, Education and Humanities Research 804,

https://doi.org/10.2991/978-2-38476-180-7_134

community, such as the capacity to process food products, use natural materials to make medications, and create crafts, are examples of local wisdom. The features of residential structures and the customs of the community for maintaining their natural surroundings both demonstrate the local wisdom of the people in adjusting to their surroundings. [2]

For Indonesia, communal intellectual property is crucial. As a result, the government has named this the 2020–2024 National Priority Program, with the objectives of enhancing cultural sovereignty, ownership, and the database for the protection of communal intellectual property laws, as well as establishing the program as a hub for information and guidance on Indonesian communal intellectual property. [3] The world community has undergone a transformation towards the conceptual age era, namely an era when creativity becomes an important factor that drives the economy.[4]. The conceptual era brought the development of the world economy towards a knowledge-based economy, namely when economic activity was dominated by activities to increase added value and product sales value.

When regarded from the perspective of ownership, intellectual property can be split along two main axes: personal intellectual property and common intellectual property. Industrial property rights and copyright and related rights are the two categories of personal intellectual property. Moreover, there are five categories of industrial property rights: trade secrets, patents, trademarks, industrial designs, integrated circuit layout designs, and plant varieties. Geographical indicators, traditional knowledge, genetic resources, and traditional cultural expressions are the four categories of communal ownership.

Communal intellectual property, often known as intellectual property, includes potential geographical indications, traditional cultural expressions, traditional knowledge, and genetic resources. Generally speaking, communal intellectual property is owned by a group as opposed to other types of intellectual property that are owned exclusively by an individual. Since culture is what gives a group or community its identity, communal intellectual property is a traditional cultural heritage that must be protected.

Geographical indications and traditional cultural expressions in general have been around for a very long time, and their authors are no longer alive. Nonetheless, a member of an indigenous culture may, through an event, such a dream, generate a Traditional Cultural Expression in the present. Furthermore, it is plausible that an individual belonging to an indigenous community, whose identity is known, produced a Traditional Knowledge and Traditional Cultural Expression. However, because a person's work is regarded as the property of all indigenous peoples in the context of customary law, traditional knowledge and traditional cultural expressions are not regarded as private property. Because of this, it is generally accepted that traditional knowledge and traditional cultural expressions do not satisfy the requirements for protection under current or traditional intellectual property systems. Throughout its evolution, numerous international discussions and agreements were formed; these served as the foundation for initiatives to safeguard traditional knowledge and traditional cultural expressions as communal intellectual property.

A geographic indication is a sign that identifies the region from which goods and/or products originated. These factors can be natural, human-caused, or a combination of the two, and they can give the goods and/or products produced their reputation, quality, and unique characteristics. As long as the reputation, quality, and attributes that form the foundation for the protection of these Geographical Indications continue to exist, the state will exclusively grant the right holders of registered Geographical Indications the right to Geographical Indications.

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Indonesia, as one of the regions with the greatest diversity of natural and cultural resources, and Bali in particular, have taken a number of preventative and repressive measures to shield indigenous natural and cultural resources from unauthorized use, theft, and piracy. another, perhaps a different nation. The government's job is to make every attempt to raise awareness of the value of Balinese people's collective intellectual property. The goal is to maximize the value of the national data center program for communal intellectual property, which is overseen by the Directorate General of Intellectual Property Ministry of Law and Human Rights. This will allow the center to serve as a platform for the inventorying of data related to communal intellectual property, in this case, the Balinese people, in order to improve the welfare of the Balinese people in particular.

2 Research Method

When normative legal research is utilized in writing, it indicates that the study's concerns, discussions, and descriptions are centered on the application of positive law's norms or rules. This kind of normative juridical research is conducted by looking at different formal legal regulations, such as statutes, and theoretical literature that is connected to the topics under investigation. study on normative law does not always imply study on juridical norms.

3 Discussion

3.1 Legal Basis for Protection of Communal Intellectual Property Law

Basic Law of Communal Intellectual Property:

1. Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications
2. Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property.

3. Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Data on Communal Intellectual Property

Based on Article 1 Point 1 of Government Regulation Number 56 of 2022 of the Republic of Indonesia Concerning Communal Intellectual Property Communal Intellectual Property, hereinafter abbreviated as KIK, is intellectual property whose ownership is communal and has economic value while upholding the nation's moral, social and cultural values.

Furthermore, in Article 4, it is stated that communal intellectual property consists of:

1. Customary Cultural Representations;
2. Conventional Wisdom;
3. Genetic Materials;
4. Indication of Origin;
5. Potential Geographical Indications.

The definition of part of communal intellectual property as mentioned above is regulated in Article 1 number 2 to number 6. All forms of copyrighted works that demonstrate the existence of a traditional culture that is upheld communally and across generations are considered traditional cultural expressions. These forms of expression can take the shape of tangible or intangible goods, or a combination of the two. Genetic resources are plant-derived genetic material, animals or microorganisms that contain units that function as hereditary carriers that have real or potential value. A feature of the origin of products and/or services that is not directly related to natural elements and is used in trade as a sign to indicate the right origin of goods and/or services is known as an indication of origin. Potential geographic indications are goods and/or products that have the potential to be protected by geographical indications but have not yet been registered as such. These goods and/or products have a certain reputation due to geographical environmental factors, such as natural factors, human factors, or a combination of the two.

Communal intellectual property is defined as intellectual property that takes the form of traditional knowledge, traditional cultural expressions, genetic resources, and potential geographical indications, according to the Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Data on Communal Intellectual Property. Generally speaking, communal intellectual property is owned by a group as opposed to other types of intellectual property that are owned exclusively by an individual. Since culture is what gives a group or community its identity, communal intellectual property is a traditional cultural heritage that must be protected.

Unlike other forms of intellectual property that are owned solely by an individual, community intellectual property is typically owned by a group. As culture is the essence of what makes a group or community unique, communal intellectual property is a customary cultural legacy that needs to be preserved. Whereas communal intellectual property with potential geographical indications is an inclusive moral right, which is managed and/or carried out by the Community of Origin, gets exclusive protection after being registered as a geographical indication in accordance with statutory provisions, as specified in the Republic of Indonesia Law Number 20 2016 on Geographical Indications and Marks.

A certificate (IG) is an acknowledgment that a product (be it food, crafts, agricultural products, or other products) has particular features and characteristics because of its place of origin. goods associated with their region, connections based on human, natural, or a combination of these factors "Natural and human influences, or a combination of these two, contribute to a product's distinctiveness. Additionally, it has been growing for a while and has greatly benefited the local community in the area where the product is made."

The lack of coordination between the regional government and the Ministry of Law and Human Rights leading sector, which is tasked by laws and regulations with inventorying potential communal intellectual property, is one of the current roadblocks in the effort to develop intellectual property data.

3.2. Advancing Balinese Welfare Through Protection of Communal Intellectual Property

One of the main obstacles to developing intellectual property data is the lack of coordination between the regional government and the Ministry of Law and Human Rights leading sector, which is mandated by laws and regulations with inventorying prospective communal intellectual property. To achieve this, every region must create better products right away and fully utilize all of its potential. It will be challenging to accomplish even if this is not done correctly, given export activities to other nations where areas would be needed to fulfill present global challenges, one of which is intellectual property. The development and protection of superior regional products within the framework of boosting regional Original Income through the management of intellectual property, particularly good communal intellectual property, is one of the global concerns surrounding intellectual property.

In order to develop and defend outstanding regional products and ultimately increase Regional Original Income, which can also naturally benefit the populace—especially that of Bali—effective intellectual property management is essential. Because of this, each region needs to recognize it right now in order to assist the regional autonomy implementation, which has already begun.

Benefits from the community's protection of geographic indicators may include:

- a. Defend goods and manufacturers of Geographically Indicated Members from fraud, abuse, and issues related to Geographically Indicated
- b. Enhancing the products' and capabilities' negotiating position, including access to new domestic and foreign markets.
- c. Boost production, create jobs, raise added value, enhance product quality, and expand prospects for product diversity.
- d. Give customers precise information on the kind, caliber, and place of origin of the goods they purchase.
- e. Expand your chances of getting promoted in order to improve your reputation.
- f. Boost business actors' welfare and revenue.
- b. Strengthening the economy and quickening the rate of regional development.
- h. Preserving and safeguarding the environment to guarantee the continuation of the qualities and characteristics of the product.
- i. Preserving national culture in relation to the caliber and standing of a geographical indication item [6]

Application for Geographical Indications based on Article 56 of Law 20 of 2016, stipulates that:

1. It is not possible to register an application for a geographic indication if:

a. in opposition to public order, morality, religion, rules and regulations, and state ideology.

b. Mislead or deceive the public with regards to a product's reputation, quality, features, origin, production method, and/or application.

c. Unless there is another equivalent word signifying a similar regional indicator factor, is a name that has been used as a plant variety and is used for similar plant types.

2. A Geographical Indication application is denied if

a. Documents describing geographic indications cannot be independently verified and/or

b. shares all of its characteristics with registered geographic indications

Satjipto Rahardjo claims that the purpose of legal protection is to defend human rights that are violated by others and to provide the community access to all the rights bestowed by the law. [7] In the meantime, legal protection, according to C.S.T. Kansil, is a range of legal remedies that law enforcement officers are required to offer in order to create a sense of security, both physically and psychologically, from disruptions and other threats from any party. [8] Legal protection, according to Philipus M. Hadjon, is the use of legal tools to defend or aid subjects of the law. [9]

If a product, be it handicrafts or agricultural products, has distinctive characteristics and characteristics that differentiate it from products from other regions that are influenced by geographical and human factors, it can be registered as a product of a Geographical Indication of an area. The geographical indication protection mechanism can be used to avoid fraudulent acts by irresponsible parties. It can also be used as a sign of confidence for consumers in the quality of products and geographic indication products can be a product of pride from an area which in turn can make the area known to the people of other regions.[10]

Geographical indications are registered in order to benefit the community as a whole, including the general public and those with direct interest. In reality, Nico Kansil's theories all have connections to his philosophy of intellectual property rights protection. In essence, the protection that is gained will be put to better use in enhancing the welfare of individuals. A sense of pride in having succeeded in getting recognition for the protection of geographical indications, along with bonuses in the form of material value as an improvement in the welfare of the owned geographical indications, all start with being recognized and granted protection in the form of geographical indications. Labels or tags applied to the manufactured goods can be used as geographical indications. The name of the location, the image's area, letters, or a mix of these can all be seen on the sign. Products that are natural, agricultural, handcrafted, or industrial are all protected by geographic indications. [11]

According to the Law on Trademarks and Geographical Indications, the community that produces the goods bearing the indications must jointly own the geographic indications rather than any one individual. This makes Geographical Indications dif-

ferent from other proprietary IP rights processes, such as privately held trademarks, patents, copyrights, industrial designs, and trade secrets. Communities within the Geographical Indications area may designate a representative agency to act on their behalf when registering Geographical Indications. If the items produced meet the standards for registration of Geographical Indications, anybody who produces goods or products with Geographical Indications located in the territory of origin of the Geographical Indications may use a Geographical Indication mark. The regulations governing the utilization of Geographical Indications are overseen by every organization that represents the region. [12]

To strengthen the protection of intellectual property rights, Indonesia stands to gain from expanding Geographical Indications protection on a global scale. This is due to the fact that ownership of Geographical Indications is community or communalistic, which is consistent with eastern and Indonesian ideals. This study addresses two main points: firstly, how Law Number 20 of 2016 concerning Trademarks and Geographical Indications serves as the basis for the Legal Protection of Geographical Indications; and secondly, how National and International Legal Instruments are used to register the Legal Protection of Geographical Indications as Marks. The two primary topics of this study are how the Legal Protection of Geographical Indications is registered as a Mark using National and International Legal Instruments, and how Law Number 20 of 2016 concerning Trademarks and Geographical Indications serves as the foundation for this legal protection. [13]

The Indonesian government is making an effort to increase public understanding of the significance of origin and geographic indicators for its citizens. Raising the community's understanding of the significance of geographic indicators and signs of origin is done in order to safeguard the community and guide its better development. [14]

The legal protection of geographic indications is further enhanced by the significant and vital role played by the government. This is consistent with the notion of the welfare state, sometimes known as the common welfare state [15], specifically social services and organizations that work to support people or groups in order to enable them to realize social welfare. The fundamental tenet of the welfare state, advanced by Watts, Dalton, and Smith, dates back to Jeremy Bentham's (1748–1832) explanation of the duty of the state to ensure the greatest happiness (well-being) of the greatest number of its citizens, or, in other words, to ensure that as many citizens as possible are happy. Bentham describes the idea of happiness or well-being using the term utility. Bentham stated that something is desirable if it has the potential to increase happiness, based on the utilitarian theory. Bentham is known as the Father of the Welfare State or the Father of the Welfare State because he too held the view that the government had a duty to ensure the happiness of as many people as possible. [16]

In essence, the use of geographical indications will improve the welfare of local communities, especially if the government participates in developing geographic indications. This is in accordance with the Welfare State theory that has been put forward by Friedlaner that social services and institutions aim to help individuals or groups who will be able to realize social welfare for these individuals or groups. Bentham uses the term utility to define happiness or well-being. Bentham argued that, accord-

ing to the utilitarian view, something is desirable if it has the capacity to make people happier. Because he shared the belief that the government had an obligation to protect the well-being of as many people as possible, Jeremy Bentham is referred to as the "Father of the Welfare State" or simply the "Father of the Welfare State." [17]

Legal Defense for Intangible Resources The Bali cashew nut has been granted a geographical indication certificate, bearing registration number ID G 000000028, under the ownership of the Community Protection of Geographical Indications (MPIG), as part of the constitutive system of the Bali-nese Community's communal intellectual property. Cashew, salt, and Kubu Bali Amed, the owner of the MPIG (Society for the Protection of Geographical Indications), received a certificate of geographic indication with registration number ID G 000000038. Coffee Arabica Kintamani, the owner of the MPIG (Society for the Protection of Geographical Indications), received a certificate of geographic indication with registration number ID IG 000000001.

This demonstrates that the community that produces Geographical Indications owns them jointly rather than being held by a single individual. Products made by humans and from natural resources, particularly handicrafts, which constitute Balinese customs, geographical indicators, and collective intellectual property, have been registered multiple times. Tunun gringsing has been granted protection as a Geographical Indication by the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights, dated March 15, 2016, with registration number IG.00.2015.000015. Celuk Silver and Gold Crafts has been awarded a Certificate of Geographical Indication with proof of registration ID G 000000074. Additionally, the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia, has granted Endek Cloth Communal Intellectual Property Protection for Traditional Cultural Expressions with the EBT Inventory Number.12.2020.0000085. This number, from an economic standpoint, can also increase the product's competitiveness and economic value when compared to similar products that have not received geographic indication certification.

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