



## Indonesian Legal Protection of Traditional Knowledge as Community Identity

Dina Haryati Sukardi<sup>1</sup>; Sunaryo Sunaryo<sup>2</sup>; Ria Wierma Putri<sup>2</sup>; Kasmawati<sup>2</sup>

<sup>1</sup> Universitas Mitra Indonesia, Indonesia

<sup>2</sup> Universitas Lampung, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i5.5687>

---

### **Abstract**

Traditional knowledge is knowledge developed by indigenous people or intellectual work based on tradition. This knowledge includes methods of cultivating and processing plants, medicine, art, and food and drink recipes. Based on this, it is very important for a country to protect traditional knowledge, especially in this case Indonesia. This research uses normative legal research methods. The results of the research show that the Indonesian state has paid attention to this matter, which is included in intellectual property law and is currently developing a bill on the protection and utilization of intellectual property of traditional knowledge and traditional cultural expressions.

**Keywords:** *Traditional; Protection; Community*

### **Introduction**

Indonesia is a country that is known for having an extraordinary wealth of traditional knowledge, including a diversity of arts, culture and traditional recipes which are inherited from our ancestors. This wealth of traditional knowledge is one of the characteristics that is greatly admired by foreign countries. Traditional knowledge is the result of practical thinking based on teaching and experience from generation to generation which cannot be separated from the community that holds it. Traditional knowledge includes health, spiritual, culture, and language of the holder community.<sup>1</sup>

Traditional knowledge was born from the spirit to survive and provide credibility to the people who hold it, but traditional knowledge such as traditional medicines and traditional foods are not free from biopiracy or misappropriation. Biopiracy is the act of exploiting traditional knowledge or genetic resources and/or patenting discoveries originating from knowledge about indigenous people's resources without rights and authority. The term misappropriation is a description of a condition where a foreign researcher conducts research on traditional knowledge, including traditional medicinal knowledge, then recognizes this knowledge as an invention and registers it in his country to obtain protection rights through the Intellectual Property Rights (IPR) regime. The following are several patents on traditional

---

<sup>1</sup> Miranda Risang Ayu dkk., *Hukum sumber daya genetik, pengetahuan tradisional dan ekspresi budaya tradisional di Indonesia* (Penerbit Alumni, 2022).

community knowledge owned by foreigners. The first example of biopiracy is tempeh. Tempe, which is a traditional Javanese food, turns out to have 35 patents owned by the United States and six patents by Japan, while Indonesia only has two patents.<sup>2</sup>

It is felt that various forms of traditional cultural protection that are available, including the current intellectual property rights system, cannot accommodate adequate protection in terms of the utilization and utilization of traditional knowledge and traditional cultural expressions. The current intellectual property rights system cannot protect traditional knowledge and traditional cultural expressions effectively and efficiently. The current intellectual property rights system stipulates a number of requirements for a creation to be protected, such as:<sup>3</sup>

1. Protection given to the individual creator, whereas in the case of traditional knowledge and traditional cultural expressions the creator is unknown and is jointly owned by a indigenous community.
2. The period of protection is limited, while traditional knowledge and traditional cultural expressions are a perspective and identity of a community whose period of ownership cannot be limited because it is the identity of a community that will exist for generations as long as the traditional community is still alive. exist and believe it.
3. Contains elements of novelty. Traditional knowledge and traditional cultural expressions have existed for a long time since the traditional society or community was born so it is not a new creation but an old tradition that has been passed down from generation to generation.

For the requirements in the current intellectual property rights system, the above requirements cannot be applied to traditional knowledge. Traditional knowledge must be released from these existing requirements, because the tradition of a region which is a culture is very different from an individual's creative work which is not passed down from generation to generation and is not the custom of a region.<sup>4</sup>

Protecting traditional knowledge is very important because traditional knowledge is the identity of the community that owns it. If traditional knowledge disappears, the identity of the community that owns it will disappear. Furthermore, there are several reasons to protect traditional knowledge. One of them is the conservation of traditional knowledge and culture. In addition, the protection of traditional knowledge is aimed at preventing unauthorized exploitation and at maintaining the economic and moral rights of holders of traditional knowledge.<sup>5</sup>

This is because traditional knowledge has economic value for developing countries and is one of the resources that is relied upon. Traditional knowledge also has cultural and social value. Another reason for the protection of traditional knowledge is the misuse (misappropriation) of traditional knowledge in gaining large profits from other people's knowledge without recognizing the source of origin or paying appropriate compensation.<sup>6</sup>

Traditional knowledge is a debated issue in many international forums. Developing countries have long advocated international protection for traditional knowledge, while developed countries have

<sup>2</sup> Muthia Septarina, "Perlindungan Hukum Pengetahuan Tradisional Dalam Konsep Hukum Kekayaan Intelektual," *Al-Adl: Jurnal Hukum* 8, no. 2 (2016), <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/viewFile/457/405>.

<sup>3</sup> Karlina Sofyarto, "Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi," *Kanun Jurnal Ilmu Hukum* 20, no. 1 (2018): 149–62.

<sup>4</sup> Erisa Ardika Prasada, "Perlindungan Hukum Terhadap Pengetahuan Tradisional di Indonesia," *Jurnal Kepastian Hukum dan Keadilan* 4, no. 1 (2022): 45–54.

<sup>5</sup> Abdul Atsar, "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta," *Law Reform* 13, no. 2 (2017): 284–99.

<sup>6</sup> Wina Puspitasari, "Perlindungan hukum terhadap pengetahuan tradisional dengan sistem perizinan: perspektif negara kesejahteraan," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 1, no. 1 (2014), <http://journal.unpad.ac.id/pjih/article/view/7061>.

resisted movement on this issue. This is because developed countries consider that traditional knowledge is in the public domain. If traditional knowledge is truly in the public domain, commercial interests that can exploit it most efficiently benefit most. Indigenous people as the owners actually suffer losses because they do not receive compensation for the commercial use of their traditional knowledge.<sup>7</sup>

Indonesia, which is rich in traditional knowledge, realizes the importance of protecting traditional knowledge. Therefore, the Indonesian government has also officially ratified international regulations regarding the recognition of traditional knowledge through Law no. 5 of 1994 concerning Ratification of the United Nations Convention on Biological Diversity.<sup>8</sup>

Furthermore, recognition of the importance of protecting traditional knowledge in Indonesia became stronger with the declaration of cultural identity and the rights of indigenous communities as constitutional rights through the second amendment to the 1945 Constitution in 2000. Article 28 I paragraph (3) of the 1945 Constitution states that cultural identity and the rights of traditional communities are respected in line with developments era and civilization. Furthermore, to implement the mandate of the 1945 Constitution, the protection of traditional knowledge is regulated in statutory regulations.<sup>9</sup>

Based on this, this research will discuss how Indonesian law protects traditional knowledge where traditional knowledge also becomes the identity of a society. This research is normative legal research where this research comes from literature such as statutory regulations and also books or scientific articles that have similar topics to the research being discussed.

## **Discussion**

Regulation of traditional knowledge is important to protect the wider community from misappropriation by foreign parties of traditional knowledge and genetic resources without benefit sharing with local communities, therefore regulation of traditional knowledge is a form of preventing continued misappropriation. Agus Sardjono stated that the regulation of traditional knowledge in the Patent Law does not preclude the possibility for outside parties to utilize biological resources and traditional knowledge from local communities. This is in accordance with the dynamic nature of traditional knowledge itself and is also in accordance with the characteristics of an open society, but what needs to be considered is that the process of using traditional knowledge brings benefits to improving the welfare of local communities.<sup>10</sup>

This regulation of traditional knowledge is also an anticipation of the provisions of Article 11 of the Patent Law. As an interpretation of Article 11 of the Patent Law which stipulates that "Unless proven otherwise, those considered to be inventors are the person or persons who are first declared as Inventors in the Application". This means that legal protection for patents in the Patent Law adheres to a constitutive registration system and prioritizes first to file principles, meaning that the party who registers first can be guaranteed to receive legal protection. This constitutive registration system can become a legal basis for foreign researchers who have bad faith in utilizing the traditional knowledge of local communities.<sup>11</sup>

---

<sup>7</sup> Miqdad Abdullah Siddiq, "Dilema Komersialisasi Pengetahuan Tradisional dalam sistem hukum Indonesia: antara perlindungan dan pembagian manfaat," *Jurnal Hukum & Pembangunan* 48, no. 1 (2018): 164–80.

<sup>8</sup> Budi Agus Risawandi, "Hak Kekayaan Intelektual dan Budaya Hukum.," 2005, <http://library.stik-ptik.ac.id/detail?id=26529&lokasi=lokal>.

<sup>9</sup> Fitriani Jamaluddin dkk., "Perlindungan Hukum Pengetahuan Tradisional Sanro," *Jurnal Ilmiah Kebijakan Hukum* 17, no. 2 (2023): 153–64.

<sup>10</sup> Sofyarto, "Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi."

<sup>11</sup> Septarina, "Perlindungan Hukum Pengetahuan Tradisional Dalam Konsep Hukum Kekayaan Intelektual."

Indonesia does not yet have the experience to design appropriate benefit sharing mechanisms regarding the utilization of genetic resources and traditional knowledge, therefore, it is important to look at the system developed by the United Nation of Environment Program (UNEP) in the Convention on Biological Diversity (CBD), namely First, building national capacity so that Indonesia, as a country rich in biological resources and traditional knowledge, has adequate readiness in relation to the utilization of these resources by both local and foreign parties.<sup>12</sup>

All types of traditional knowledge spread across all regions in Indonesia have their own characteristics, and this traditional knowledge deserves legal protection. Legal protection is divided into two, namely preventive legal protection and repressive protection. Preventive legal protection means legal protection that is preventive in nature, which has the aim of preventing disputes from occurring. Providing protection for Traditional Knowledge is a form of effort to prevent exploitation by developed countries of Traditional Knowledge in Indonesia. Regulations related to Traditional Knowledge are spread out in several Legislative Regulations and some are in the form of Draft Legislative Regulations (RUU). Protection of Traditional Knowledge is part of the Traditional Knowledge and Cultural Expressions Bill (RUU PTEBT). Referring to Duffield, in order to protect traditional knowledge, there are at least three protection models that can be developed, namely:<sup>13</sup>

Traditional knowledge protection model		
Utilise Existing Regulations There Before	Modifications/Rules Additional/Complementary	Develop Regulations that Special in nature
Customary law	Codification and formal recognition of provisions in customary law.	-
Contracts, equitable transfer agreements, and other public and civil law concepts	Access and profit sharing agreements	Provisions for biodiversity management with obligations for traditional knowledge, access to statutory regulations
Intellectual property rights law	Material origin certificate, Prior Inform Consent (PIC), etc.	A new category in intellectual property law.

The concept of protecting traditional knowledge as described by Duffield is in line with the protection model developed by WIPO. WIPO generally explains two protection models, namely:<sup>14</sup>

- a) Defensive protection. Defensive protection refers to efforts aimed at preventing the granting of IPR to traditional knowledge by other parties without the knowledge and permission of the owner of the traditional knowledge. 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.
- b) Positive protection. Positive protection can be carried out in two forms of legal action, namely by making the use of laws related to IPR more effective or through the establishment of special laws.

<sup>12</sup> Risawandi, "Hak Kekayaan Intelektual dan Budaya Hukum."

<sup>13</sup> Sofyarto, "Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi."

<sup>14</sup> 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.

As for Law Number 13 of 2016 concerning Patents, Article 26 states that Traditional Knowledge is included in the category of inventions which, if registered, the information must be recognized by official government institutions, and regarding the distribution of proceeds from the registration of inventions originating from Traditional Knowledge is not explained in detail in the article. This of course creates a legal vacuum, especially since the use of traditional knowledge is permitted, but there are no regulations that specifically regulate the distribution of profits from the use of traditional knowledge. The use of Traditional Knowledge is very urgent if it is related to the Patent rights regime, because many inventions originating from Traditional Knowledge are misused by third parties. The third party in this case is a foreign party who is not part of the indigenous people but registers an invention based on Traditional Knowledge to obtain Patent Protection. As happened in Brazil, where a foreign party registered a patent for captopril and no economic benefits were given to the Brazilian tribe as the first party to use the drug in traditional medicine.<sup>15</sup>

In practice, the characteristics of traditional knowledge, which when compared with the western concept of IPR do not qualify as inventions that can request IPR, are often utilized by other countries that have expertise and high technology to take this traditional knowledge and then modify, specify and mix it in such a way in such a way that it becomes a new discovery that meets the criteria for applying for IPR. It is certain that if traditional knowledge with a touch of new innovation is patented, then the economic benefits will only be owned and enjoyed by the IPR holder. Even traditional communities as the original owners, if they want to reuse their traditional knowledge, have to go through certain procedures and are burdened with high costs.<sup>16</sup>

Traditional knowledge is communally owned and it is difficult to find out who owns it individually, so traditional knowledge is classified as prior art, which means that knowledge is already owned and known by many people. The interesting thing about Traditional Knowledge is that the economic aspect is not the dominant aspect. However, the ownership aspect of Traditional Knowledge is important to study, because it relates to mastery of Traditional Knowledge and the economic benefits attached to that Traditional Knowledge. There are several important points related to the urgency of protecting Traditional Knowledge, including those related to the principles of justice, conservation, maintenance of traditions and culture, as well as minimizing misuse of this by unauthorized parties. Apart from preventive legal protection, there is also a need for repressive legal protection, which means that the final protection is in the form of sanctions if a dispute occurs or a violation has been committed. In the Law on the Advancement of Culture, one of the object areas for the advancement of culture is related to Traditional Knowledge. Traditional knowledge is one of the objects of cultural advancement that must be protected, and in Article 53 of the Cultural Advancement Law, it is stated that destroying, damaging, or eliminating or even causing cultural advancement facilities and infrastructure to become unusable will result in sanctions in the form of imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah). It is interesting that what is protected in this Law is only infrastructure related to objects of cultural advancement, it does not discuss the protection of Traditional Knowledge if it is claimed by other parties.

Maintaining traditional knowledge is carried out by maintaining the noble value and wisdom of traditional knowledge, using traditional knowledge in daily life, maintaining the diversity of traditional knowledge, reviving and maintaining the cultural ecosystem for each traditional knowledge and passing on traditional knowledge to the next generation. After maintenance is carried out, traditional knowledge is also saved to protect traditional knowledge. Rescue is carried out by means of revitalization, repatriation and/or restoration. Another form of protection is publications related to the inventory, security, maintenance and rescue of traditional knowledge. Publications are carried out to disseminate information to the public both domestically and abroad using various forms of media. The use of traditional

---

<sup>15</sup> Siddiq, "Dilema Komersialisasi Pengetahuan Tradisional dalam sistem hukum Indonesia."

<sup>16</sup> Jamaluddin dkk., "Perlindungan Hukum Pengetahuan Tradisional Sanro."

knowledge is carried out to build national character, increase cultural resilience, improve community welfare, and increase Indonesia's active role and influence in international relations.<sup>17</sup>

In Indonesia, efforts to document traditional knowledge data are a program of the Ministry of Research and Technology called the Traditional Knowledge Protection Program (LINTRAD). This program aims to carry out an inventory and compilation of various traditional knowledge documents, both documents that have become public domain and restricted documents, so that they can then be used in the context of protecting and managing traditional knowledge.

### **Conclusion**

In Indonesia, traditional knowledge is governed by a number of laws and rules, including UUPK, Patent Law, and UUHC. UUHC regulates traditional knowledge only with regard to traditional cultural expressions; agricultural, scientific, technical, ecological, and medicinal knowledge are not included in the category of traditional knowledge that is regulated. According to the Patent Law, traditional knowledge pertaining to novel technological inventions that have inventive steps and are applicable in industry is protected. On the other hand, traditional knowledge unrelated to novel technological inventions is not eligible for registration as a patent.

### **References**

- Atsar, Abdul. "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta." *Law Reform* 13, no. 2 (2017): 284–99.
- Ayu, Miranda Risang, LL M SH, Ph D Harry Alexander, MH SH, dan SH LL M Wina Puspitasari. *Hukum sumber daya genetik, pengetahuan tradisional dan ekspresi budaya tradisional di Indonesia*. Penerbit Alumni, 2022.
- Jamaluddin, Fitriani, Muhammad Ashabul Kahfi, Nurul Adliyah, dan Wawan Haryanto. "Perlindungan Hukum Pengetahuan Tradisional Sanro." *Jurnal Ilmiah Kebijakan Hukum* 17, no. 2 (2023): 153–64.
- Kusumadara, Afifah. "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.
- Prasada, Erisa Ardika. "Perlindungan Hukum Terhadap Pengetahuan Tradisional di Indonesia." *Jurnal Kepastian Hukum dan Keadilan* 4, no. 1 (2022): 45–54.
- Puspitasari, Wina. "Perlindungan hukum terhadap pengetahuan tradisional dengan sistem perizinan: perspektif negara kesejahteraan." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 1, no. 1 (2014). <http://journal.unpad.ac.id/pjih/article/view/7061>.
- Risawandi, Budi Agus. "Hak Kekayaan Intelektual dan Budaya Hukum,." 2005. <http://library.stikptik.ac.id/detail?id=26529&lokasi=lokal>.
- Septarina, Muthia. "Perlindungan Hukum Pengetahuan Tradisional Dalam Konsep Hukum Kekayaan Intelektual." *Al-Adl: Jurnal Hukum* 8, no. 2 (2016). <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/viewFile/457/405>.

<sup>17</sup> Eman Suparman, "Perlindungan Hukum Kekayaan Intelektual Masyarakat Tradisional," *Jurnal Pengabdian Kepada Masyarakat* 2, no. 7 (2018): 556–59.

- Siddiq, Miqdad Abdullah. “Dilema Komersialisasi Pengetahuan Tradisional dalam sistem hukum Indonesia: antara perlindungan dan pembagian manfaat.” *Jurnal Hukum & Pembangunan* 48, no. 1 (2018): 164–80.
- Sofyarto, Karlina. “Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi.” *Kanun Jurnal Ilmu Hukum* 20, no. 1 (2018): 149–62.
- Suparman, Eman. “Perlindungan Hukum Kekayaan Intelektual Masyarakat Tradisional.” *Jurnal Pengabdian Kepada Masyarakat* 2, no. 7 (2018): 556–59.

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).