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CO-OWNERSHIP OF COMMUNAL INTELLECTUAL PROPERTY IN PERSPECTIVE SUPPORT TO REGIONAL TOURISM

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ABSTRACT

Purpose: The aim of this research is to determine the extent to which cross-conceptions in intellectual property rights can be resolved, and ultimately can be used to support efforts to record the legality of rights both individually and communally. The next goal is to encourage communal intellectual property to become a regional tourism commodity.

Theoretical Reference: Theoretically, Intellectual Property Rights have an individual and personal nature, while communal intellectual property actually has a communal nature. So, placing communal intellectual property rules into intellectual property rights law brings about theoretical confusion.

Method: The research method used uses a doctrinal approach by collecting data through literature study and then presenting it. Data were analyzed descriptively.

Result and conclusion: This study found: the fact that IPR legislation in Indonesia places communally owned objects into IPR legislation, such as the inclusion of Geographical Indications containing Communal Intellectual Property in the Trademark and Geographical Indications Law, which is actually a statutory regulation. IPR invitation (personal). Likewise, the further impact is the weak potential for utilizing economic rights in the form of loss of potential tourism commodities, especially regional tourism. It is concluded that there is equalization of intellectual property legal institutions, namely the incorporation of communal intellectual property objects into intellectual property legislation. Even though this equality does not constitute equal distribution of legal principles, the resulting legal consequences weaken the economic influence of a commodity. Optimizing the economic potential of communal intellectual property, especially to support regional tourism development, will be disrupted.

Research Implication: This research has implications for harmonization of the principles of intellectual property law so that they can be applied in the development of economic rights, especially in the tourism sector.

Originality/value: This research is something new because it not only looks at conflicting conceptions in the regulation of intellectual property rights, but synergizes with legal benefit factors, namely the economic impact of tourism that can be achieved if.

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CO-PROPRIEDADE DE PROPRIEDADE INTELECTUAL COMUNITÁRIA NA PERSPECTIVA DE APOIO AO TURISMO REGIONAL

RESUMO

Objetivo: O objectivo desta investigação é determinar até que ponto as concepções cruzadas em direitos de propriedade intelectual podem ser resolvidas e, em última análise, podem ser utilizadas para apoiar esforços para registar a legalidade dos direitos, tanto individual como comunitariamente. O próximo objectivo é encorajar a propriedade intelectual comunitária a tornar-se um produto turístico regional.

Referencial Teórico: Teoricamente, os Direitos de Propriedade Intelectual têm natureza individual e pessoal, enquanto a propriedade intelectual comunal tem, na verdade, natureza comunal. Assim, incluir regras comunitárias de propriedade intelectual na legislação sobre direitos de propriedade intelectual provoca confusão teórica.

Método: O método de pesquisa utilizado utiliza uma abordagem doutrinária, coletando dados por meio de estudo bibliográfico e posteriormente apresentando-os. Os dados foram analisados descritivamente.

Resultado e conclusão: Este estudo constatou: o fato de que a legislação de DPI na Indonésia inclui objetos de propriedade comunal na legislação de DPI, como a inclusão de Indicações Geográficas contendo Propriedade Intelectual Comunal na Lei de Marcas e Indicações Geográficas, que na verdade é uma regulamentação estatutária. Convite DPI (pessoal). Da mesma forma, o impacto adicional é o fraco potencial de utilização de direitos económicos sob a forma de perda de potenciais produtos turísticos, especialmente o turismo regional. Conclui-se que há equalização das instituições jurídicas da propriedade intelectual, nomeadamente a incorporação de objetos de propriedade intelectual comunais na legislação de propriedade intelectual. Embora esta igualdade não constitua uma distribuição equitativa de princípios jurídicos, as consequências jurídicas resultantes enfraquecem a influência económica de uma mercadoria. A optimização do potencial económico da propriedade intelectual comunitária, especialmente para apoiar o desenvolvimento do turismo regional, será perturbada.

Implicações da Investigação: Esta investigação tem implicações para a harmonização dos princípios do direito da propriedade intelectual para que possam ser aplicados no desenvolvimento dos direitos económicos, especialmente no sector do turismo.

Originalidade/valor: Esta investigação é algo novo porque não só analisa concepções contraditórias na regulação dos direitos de propriedade intelectual, mas também cria sinergias com factores de benefícios legais, nomeadamente o impacto económico do turismo que pode ser alcançado se.

Palavras-chave: propriedade intelectual comunitária, direitos de propriedade intelectual, turismo.



1 INTRODUCTION

Joint ownership is positioned differently from private ownership which can be placed on objects, both material and immaterial objects, but in the concept of Intellectual Property Rights (IPR) in its historical sources it prioritizes individual ownership which is just starting. developed in the approach of shared ownership or communal ownership (Adawiyah and Rumawi, 2021). With shared ownership, it becomes a concern to produce a psychological effect for the community or certain community members to make their ownership effective. The management of economic rights embodied in IPR ownership encourages efforts to generate a type of source of economic income in areas where communal intellectual property is maintained. In general, legal protection for communal intellectual property aims so that those who have rights can exploit their wealth with a sense of security and comfort, because a sense of security and comfort triggers a climate that allows that person to work, by producing further creations or inventions (Atmadja, 2015)

The most prominent communal intellectual wealth can be seen in the wealth of artistic traditions, crafts, sacred activities, ceremonies, folk games, traditional knowledge including traditional knowledge of community traditional food (Yen, 2009), and others. In general, this wealth has long been an activity in daily practice that grows and develops as a manifestation of habits in mutual interaction in society, both internally among fellow citizens and interactions with the outside world (Levine, 2005)

Communal intellectual property, both tangible and intangible, is sometimes not realized by the economic value contained therein (Guo, et al. 2021) but is only seen as a habit to meet the needs of daily life. The economic value born from the principle of economic rights attached to the concept of IPR is not maximized. Recognizing that Indonesia is a country with diverse cultures, if this diversity can be managed properly and correctly, the opportunities for Indonesia's economic revival will be wide open (Nugroho, 2017)

It is different if the economic right is attached to IPR which is individual in nature usually has a higher development effect. IPR owners even struggle to defend their economic rights through selling, leasing, developing, expanding markets, promoting licenses and pursuing royalties. If communal intellectual property is managed with the same treatment as IPR in general, of course it will have an economic impact in the form of increasing regional income from this sector (Dapar, et al, 2020). One of the fields that



can be developed is through efforts to design tourism products based on the development of communal intellectual property through the creation of souvenirs, making show events, making demonstrations, arenas, culinary, competitions, and so on.

The government (c.q. Regional Office of the Ministry of Law and Human Rights of South Sulawesi) has recorded 140 (one hundred and forty) Communal Intellectual Property out of 156 (one hundred and fifty-six) proposals recorded to obtain registration/registration numbers.

(<https://www.antaraneews.com/berita/2359554/kemenkumham-sulsel-usulkan-156-kekayaan-intellectual-komunal>). From this record, 2019 Non-Tax State Revenue (PNBP) amounted to 460 million rupiah, increasing in 2020 to 783 million rupiah. (<https://www.kompas.tv/article/108247/penerimaan-negara-dari-kekayaan-intellectual>)

Tourism is now one of the important commodities developed by the country. The birth of the ministerial nomenclature that regulates tourism affairs combined with creative economy affairs should be a trigger for our awareness that this field is becoming the government's concern. It also needs to be realized that the Unitary State of the Republic of Indonesia with enormous cultural wealth, many and varied ethnic groups, must actually be a source of inspiration on how to build the preservation of traditional wealth, in line with efforts to promote culture-based tourism.

This will be even more effective if the community's sense of ownership of their communal intellectual property is strengthened by the legality of ownership that is conceptually developed. Communal Intellectual Property (KIK) is a concern of the government because there is still a concept conflict between Intellectual Property Rights and Communal Intellectual Property. The conflict with this concept is temporarily resolved by incorporating some of the concepts of communal intellectual property into certain Intellectual Property Rights regulations. Research conducted by Ruhtiani (2022) shows that even compared to the protection of communal intellectual property in China it can be said to be almost the same because China has not yet provided separate regulations regarding its intellectual property, but only limited to laws that protect its cultural heritage.

2 RESEARCH METHODS

This study uses doctrinal legal research methods through a conceptual approach and a statutory approach which is analyzed by prescription. The doctrinal method is a



research method in law that makes doctrine understood by researchers as a basic concept. (Irianto, S., Shidarta. *Legal Research Methods: Constellation and Reflection*. (Jakarta: Yayasan Pustaka Tor Indonesia, 2018). While the conceptual approach is often used in doctrinal research because this approach is based on the doctrines developed in legal science is used as the basis for argumentation. In addition to the conceptual approach, the author also uses the concept of legislation to complement and refine arguments through legal products. In fact, in this study the legal materials used are primary legal materials. Taken from statutory regulations and secondary legal materials taken from books, articles and legal journals. These legal materials are then traced using document study techniques (library) in obtaining sources of information related to the problem under study.

3 RESULTS AND DISCUSSION

3.1 HKI AND KIK AT THE INTERSECTION OF CONCEPTS

Communal Intellectual Property actually wants to provide protection for a wealth that is born from the results of human intellectual processing which is perceived as cultural wealth and community traditions. KIK is the joint ownership of local communities, certain ethnic groups, so that it experiences difficulties when its legal arrangements are included in the intellectual property rights law. Judging from the birth of rights, most of the KIK were also born from the processing of the human brain, namely people who are trying to overcome the conditions and difficulties they face both in terms of daily work, health, and social relations. Community is a measure of who is the creator or inventor of the work produced.

Meanwhile, IPR prioritizes private ownership, namely the work produced belongs to the person who embodies the creative and innovative work. Based on the principle of whoever uses his hands to work, he is the most entitled to what his hands do. People in this sense can be in the form of legal entities. An ability of human thought that is expressed to the wider community in all forms is an IPR product that can have beneficial values for human life and has economic value (Margono). Placing KIK (which is communal) into IPR law (which is individual in nature) is considered difficult (Roisa, 2015)

Particularly in determining who owns the subject of KIK, such difficulties do not occur in determining who owns the subject of IPR. Materials born from the experience of community traditions to produce cultural products such as equipment, medicines,



methods of treatment, art, worship are seen as shared property for mutual benefit in the context of mutual survival. So that the methods or products that are born are not made private property by members of the public who obtain them in their daily community activities. From what was obtained, it can be said that there is an element of relationship between humans and between humans and the environment, both in the spiritual and physical sense, which aims to achieve a balance between humans and humans, between humans and the supernatural realm (spirit world), and between humans and the real world. as well as with the community (Sardjono, 2010).

Thus, recognition of community-based communal intellectual property ownership is absolutely considered as a form of concern for the deep connectedness between humans (society) who develop and manage their intellectual works with a focus on the natural environment.

Such expressions in the realm of law are grouped into the nomenclature of traditional cultural expressions which in fact are communal intellectual property. Traditional cultural expressions are actually old creations which can be deduced from the traditional word attached to them. However, it is not traditional works that are of concern, but works that are born as a result of the expression of these traditional products. Traditional cultural expressions that are communal are seen as insufficient to be protected by personal IPR (Soelistyo, 2014). Previously a separate bill had been proposed, but in the end the law was not issued and arrangements regarding Traditional Cultural Expressions were included in UUHC 2014. Likewise Geographical Indications whose ownership is communal, but because in its function it is a trademark (mark) for the existence of a product of natural resources, the legal provisions are regulated in the trademark law, which the postscript is an intellectual property right with private property rights.

3.2 OWNERSHIP AND JOINT OWNERSHIP

The problem of ownership is an urgent matter in normative law because it gives the widest possible power to do something about the objects it owns compared to other material powers. Owning is the main right to other material rights (Sofwan in Simanjuntak, 2015), in such a position property right must be obtained in good faith (Faisal, 2021). Property rights as material rights in the Continental European legal system are absolute rights which are the most important material rights and are the main rights



and sources of ownership which in their development are reduced to equitable assets (Hasan in Margono, 2015)

Property rights can be seen from three angles (Djumhanah and Djubaidillah. 1997):

1. Property Rights Viewed from an Economic Angle. An economist views property rights as something that is based on law so that they can be enforced and affect the mechanism of economic life (Shovkhalov and Idrisov, 2021; Hernández et al,2020:5).
2. Property rights from a legal perspective. Property rights basically consist of a set of laws and regulations, as well as customs at a certain time and a certain place become the rules of the game for relationships related to ownership or control (Brewer,2019)
3. Property Rights Seen from a Social Angle. Property rights are a collection of various kinds of rights attached to natural resources, human resources, and cultural resources. There are inherent social values that determine who has the right and cannot be disturbed (Brewer, 2019)

Property rights show the relationship between a person and the object that is the target of ownership (Makkawaru, 2019). Fitzgerald states that the characteristics and rights included in property rights are (Rahardjo, 2006):

1. The owner has the right to own the goods, even though he may not be in control, but the right to the goods belongs to the original right holder.
2. The owner usually has the right to use and enjoy the goods he owns, which is basically the freedom for the owner to act on his goods.
3. The owner has the right to spend, damage or divert the goods.
4. Ownership is timeless. Ownership is theoretically valid forever.
5. Ownership is residual in the sense that it has remainder after other rights are given to other people.

Ownership and control of objects can occur by way of creation, namely the work of forming or procuring new objects using expertise or skills, both material works and intellectual works. The results of these two types of work are called creations in the form of material property rights and intellectual property rights, and this is wealth for the creator.



Co-ownership has been recognized in a wider context such as the common heritage of mankind as a rule for protecting the products of natural and cultural resources which in international law are regulated by natural or cultural areas or human elements as inheritance and protection against exploitation. by individuals or corporations (Margono, 2015).

3.3 TOURISM PRESERVING CULTURE

There are several types of interest tourism that are known in our tourism treasury, namely among others: nature tourism, cultural tourism, and special interest tourism that can be managed by the state and individuals whose purpose is to meet human needs for entertainment and pleasure, both of which can be done individually or with family and community. The motivation to travel is due to the human urge to meet strong needs according to the time, circumstances and experience concerned by following the motivational hierarchy, namely travel encourages certain mobility for that person. (Muljadi A.J., 2009).

Encouragement of human mobility is influenced by:

1. Economic and business needs,
2. The need for political interests,
3. Security needs,
4. Health Needs,
5. The need for shelter,
6. The need for religious interests
7. The need for educational interests
8. The need for cultural importance,
9. The need for family relationships,
10. Recreational needs,
11. The need for conferences.

Raising cultural interest is mostly carried out in areas that have certain cultural assets that can be developed and utilized as objects of cultural tourism (Kalvet, et al; 2020).Indonesia is very rich with this potential, it's just that it needs the maximum touch from stakeholders so that the economic potential of the object is not wasted. This encouragement has an impact on the joints of people's lives such as economic and social,



cultural, political, and also the environment. Therefore, it is the obligation of the government to develop it.

The concept that is usually developed with cultural tourism is to maintain cultural preservation through tourism and maintain cultural heritage through tourism as an effort to maintain community relations with their cultural environment. In addition, there is a link between cultural and environmental protection agreements and the effectiveness of tourism implementation and this has become an international standard by the WTO and UNESCO (Lempert, 2016).

From a number of cultural assets that have been listed, their KIK are scattered in various regions in South Sulawesi, such as Sop Saudara (Sop Pangkep), Songkok Recca (Bone), Minas (Sinjai health drink), Mappadandang (Parepare), Masssureq (reading Lontara's book in Wajo), Geographical Indications for Pepper (East Luwu), Kalosi Coffee and Pulut Mandoti (Enrekang), Toraja Coffee (Tana Toraja). Enrekang also recorded Maccera Manurung, culinary: Dangke, Nasu Cemba, Camme Burak, Deppa Te, press, and Mangbas. Sinjai district has KIK ceremony Marrimpa Salo, Mapigau Sihanua, Mappigau Hanua, Maddongi Dance, Maddui Aju, Alo Bird Dance, Massulo Beppa, Topekkeng Agreement, Wear Karampuang Clothes, Karampuang Traditional House, Laha Bete, Laha Racci, and Poto'-poto' .

From a number of cultural assets that have been listed, their KIK are scattered in various regions in South Sulawesi, such as Sop Saudara (Sop Pangkep), Songkok Recca (Bone), Minas (Sinjai health drink), Mappadandang (Parepare), Masssureq (reading Lontara's book in Wajo), Geographical Indications for Pepper (East Luwu), Kalosi Coffee and Pulut Mandoti (Enrekang), Toraja Coffee (Tana Toraja).

Empowerment of cultural assets of high wealth value and then maximizing their economic effect through the promotion of cultural tourism will undoubtedly provide benefits for the region or society. Encouraging tourism management based on cultural assets will have a good impact on the preservation and maintenance of cultural traditions as well as having an economic impact on the region and its people so that there is a link between programs for managing cultural traditions and tourism development programs. The South Sulawesi Ministry of Law and Human Rights, by embracing the South Sulawesi Cooperatives and MSME Office, the South Sulawesi Industry Service, and the Center for Plantation Products Industry, reported that efforts to maximize the economy



from recording cultural assets managed to raise 1.3 billion rupiah in funds, an increase from 960 million rupiah in the previous year.

4 DISCUSSION

This study aims to divide three important parts, namely: first, that conceptually Intellectual Property Rights (HKI) and Communal Intellectual Property (KIK) are two different understandings and concepts in principle but in reality (including in Indonesia) both are embedded in regulatory institutions. Likewise in laws that are categorized as Intellectual Property Rights (IPR), more specifically it can be seen for example in the Copyright Law and the Trademark Law and Geographical Indications. Even so, experts see it as a confusion of conceptions that must be ended and solutions sought; secondly, that the confusion of this conception has an impact on weakening the fulfillment of economic rights attached to the two types of wealth concepts. In the concept of IPR there is a weakening as a result of not including communal intellectual property as a whole in the concept of IPR due to differences in personal/individual and communal principles, on the other hand communal intellectual property which is principally communal (not personal/individual) makes it difficult to place communal intellectual property products into HKI conception, and; third, that a further impact of the weak potential for exploitation of economic rights is the loss of tourism commodity potential, especially regional tourism. The maximization of economic considerations in the economic rights attached to IPR cannot necessarily be applied to communal intellectual property because property ownership in communal intellectual property is not individual. Maximizing the pursuit of economic rights over IPR is far more perfect than the pursuit of economic rights over communal intellectual property.

Thus, this study wants to provide the view that;

1. With regard to the first important part, namely the difference in conception between Intellectual Property Rights (IPR) and Communal Intellectual Property Rights (KIK), (Dunagan, et al;2020) which is in the statutory regulations - Indonesian laws are both attached to the same regulatory framework, namely into laws that are categorized as Intellectual Property Rights (HKI) for now it will continue to be carried out while ensuring that communal intellectual property rights are fought for to be placed in laws a separate law as previously attempted when the Draft Traditional Cultural Expressions (EBT) was proposed.



2. If the first problem can be overcome, then with regard to the second important part, namely that the confusion of this conception has an impact on weakening the fulfillment of economic rights inherent in the two types of wealth concepts, of course this can be maximized gradually because in these two concepts of wealth each will control their respective legal institutions. Communal intellectual property can more freely develop its rules so that the form of property ownership becomes clearer, which will have a positive impact on owners of communal property to develop their potential economic rights.

3. As a country that has the potential for a wealth of very diverse and numerous cultural traditions, this potential can be further developed into potential tourism products. Especially if the concept of ownership of wealth between KHI and KIK has been maximized. The pursuit of economic rights over communal intellectual property can be perfected by optimizing the economic rights owned by the community, in this case the region or country that owns the communal intellectual property.

5 CONCLUSION

Intellectual Property Rights in the struggle to place communal intellectual property rights are placed in legislation regardless of the IPR law in which the draft law was submitted. The regularity of the concept has an impact on the growth and improvement of its economic rights due to the clarity in making decisions to utilize the KIK for commercialization purposes.

Community ownership that is organized in a legal institution that firmly confirms the nature of the potential for cultural wealth is expected to be able to perfectly encourage the potential of tourism products. This can be seen as an effort to optimize the economic rights owned by regional communities or countries that own communal intellectual property.



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