



# Improving the Welfare of the Balinese People Through the Protection of Communal Intellectual Property

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**Abstract.** Intellectual property rights are exclusive rights to enjoy economically the results of an intellectual creativity. In general, ownership of intellectual property rights can be grouped into 2 (two) parts, namely: personal/individual intellectual property ownership and communal/group intellectual property ownership. Personal intellectual rights are intellectual rights that are fully owned by individuals or groups of individuals with or without submitting an application to the State to obtain a monopoly right on economic exploitation, while communal intellectual rights are intellectual rights that are fully owned by a group of people who live in a place permanently. In this regard, communal intellectual property rights in Indonesia are divided into three, namely traditional cultural expressions, traditional knowledge, genetic resources and potential geographic indications. Indonesia as a member of the WTO has generally ratified the TRIPS Agreement, and subsequently enacted legislation in accordance with the TRIPS Agreement. The Balinese government in particular has made efforts to protect communal intellectual property with the aim of increasing the economic value of a local product containing intellectual property, especially communal intellectual property.

**Keywords:** community welfare · bali · protection · communal intellectual property

## 1 Introduction

Indonesia is a country that has abundant natural resources, both biological and non-biological. In fact, it is not uncommon for them to have uniqueness or characteristics that are not found in other places (endemic). Indonesia also has cultural diversity which has been maintained from generation to generation and has become the identity of its group.

Cultural diversity is the fruit of the expression of customs, values of beliefs, morals, and habits, as well as the knowledge and skills of the people in adapting to their natural environment and in interacting in their social life. This cultural diversity is then maintained and passed on to the next generation and becomes a communal identity.

Some forms of cultural expression that we can see include the presence of regional languages and dances, as well as traditional clothing and ceremonies. Local wisdom in

the form of knowledge and skills including the community's ability to utilize and mix natural materials into medicines, processing food products, and handicraft products. The local wisdom of the community in adapting to their environment can also be seen in the characteristics of the house building and in the community's tradition of managing their natural environment. [1].

The Communal Intellectual Property which was received by Bali a few months ago are the Balinese Endek Fabric and Balinese Songket. Previously, Bali had obtained Geographical Indication certificates for Kintamani Bali Arabica Coffee, Kubu Bali Cashew, Bali Amed Salt, Bali Gringsing Tunun, and Pupuan Bali Robusta Coffee.

Communal Intellectual Property is very important for Indonesia. For this reason, the government has designated this as a National Priority Program 2020–2024 which aims to strengthen cultural sovereignty and ownership of Indonesian communal intellectual property and strengthen the database for legal protection of communal intellectual property as well as become a center of knowledge and reference regarding Indonesian communal intellectual property.[2].

Intellectual property when viewed from ownership, it can be divided into two broad lines, namely personal intellectual property and communal intellectual property. Personal intellectual property is divided into two, namely Copyright and Related Rights, and Industrial Property Rights. Furthermore, industrial property rights are divided into five, including patents, trademark rights, trade secrets, industrial designs, integrated circuit layout designs, and plant varieties. Communal ownership is divided into geographical indications, traditional knowledge, genetic resources, and traditional cultural expressions.

As one of the regions that has a diversity of natural and cultural resources, Indonesia in general and Bali in particular have made various preventive and repressive efforts to protect endemic natural and cultural resources from recognition, theft, and piracy committed by third parties. Other, even other countries. The diversity of natural and cultural resources that Bali has has become a haven for foreign researchers who conduct various researches in Indonesia. However, public awareness about the importance of legal protection of natural wealth and communal intellectual property owned by Balinese people has not been maximized. The role of the government is to maximize efforts in socializing the importance of communal intellectual property owned by the Balinese people. Optimization of the Communal Intellectual Property National Data Center program which is managed by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights as a forum for inventorying communal intellectual property data, in this case especially the Balinese people. The theft, acknowledgment and piracy of communal intellectual property have had several detrimental impacts on the Balinese people, especially in the economic field.

## **2 Research Method**

Dalam penulisan menggunakan penelitian hukum normatif, artinya permasalahan yang diangkat, dibahas dan diuraikan dalam penelitian ini difokuskan dengan menerapkan kaidah-kaidah atau norma-norma dalam hukum positif. Tipe penelitian yuridis normatif dilakukan dengan mengkaji berbagai macam aturan hukum yang bersifat formal

seperti Undang-Undang, literatur literatur yang bersifat konsep teoritis yang kemudian dihubungkan dengan permasalahan yang menjadi pokok pembahasan. Penelitian hukum normatif tidak selalu berkonotasi sebagai penelitian norma yuridis.

### 3 Discussion

#### 3.1 Cases of Communal Intellectual Property Violations

Legal Basis of Communal Intellectual Property:

1. Law of the Republic of Indonesia Number 11 of 2013 concerning 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
2. Law of the Republic of Indonesia Number 28 of 2014 concerning Copyrights
3. Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications
4. Law of the Republic of Indonesia Number 13 of 2016 concerning Patents
5. Law of the Republic of Indonesia Number 11 of 2019 concerning the National System of Science and Technology
6. Government Regulation of the Republic of Indonesia Number 48 of 2011 concerning Animal Genetic Resources and Livestock Breeding
7. Regulation of the Minister of Agriculture Number: 67/Permentan/OT.140/12/2006 concerning Preservation and Utilization of Plant Genetic Resources
8. Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Communal Intellectual Property Data
9. Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.2/Menlhk/Setjen/Kum.1/1/2018 concerning Access to Genetic Resources of Wild Species and Profit Sharing from Their Utilization

Based on the Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Communal Intellectual Property Data, Communal Intellectual Property is defined as Intellectual Property in the form of Traditional Knowledge, Traditional Cultural Expressions, Genetic Resources, and Potential Geographical Indications. In general, Communal Intellectual Property is Intellectual Property whose ownership is group, in contrast to other types of Intellectual Property whose ownership is exclusive and individual. Communal intellectual property is a traditional cultural heritage that needs to be preserved, considering that culture is the identity of a group or society.

Other countries voiced their citizens to register all intellectual property owned. Indonesia also needs to provide a national data center that is integrated and easily accessible to the public. Currently the cultural heritage database is still scattered so that it will be difficult for the community. The database includes intangible cultural heritage located in government institutions. DJKI as a voice in coordinating the collection and integration of national data related to communal intellectual property consisting of Genetic Resources, Traditional knowledge and Folklore and Traditional Cultural Expressions. In addition to strengthening sovereignty, the Communal Intellectual Property Data Center also has

many functions, namely as a reference source for treatment in areas not covered by modern medicine, access to historical values ranging from culture and traditional knowledge, as a reference source for researchers, and Indonesian genetic resources. Making it easier and so as to improve the economic welfare of the community.

It is known that there are several alleged violations of communal intellectual property that have occurred in Indonesia. In 2008, PT Karya Tangan Indah, which is owned by American citizen John Hardy, sued Ketut Deni Aryasa, a Balinese artist who was accused of plagiarizing without permission on charges of plagiarizing silver motifs. Fleur motif (flower motif) and crocodile skin motif. Traditional Balinese people know. John Hardy argued that the design had been copyrighted at the Directorate General of Intellectual Property under the name "Batu Kali". Deny was then charged with 2 years and a fine of Rp. 5 million, a subsidiary of six months in prison. The prosecutor charged Deny with allegedly plagiarizing the motive that had been registered by John Hardy's PT Karya Hand Indah. The motives accused of being plagiarized are the Kali motif and the Fleur motif (from French which means flower).

Although Deny was acquitted in his verdict, the silver craftsman case, which was tried on charges of plagiarism of motifs registered by foreigners in 2008, has made silver craftsmen, especially those in Celuk Gianyar, worried about running their business. However, now silver craftsmen can rest easy because silver craftsmen, especially silver craftsmen in Celuk, because Celuk Silver and Gold Handicrafts have received a Geographical Indication Certificate (IG) from the Directorate General of Intellectual Property Rights (HAKI), the Ministry of Law and Human Rights of the Republic of Indonesia. Certainty of Celuk Silver and Gold Handicrafts received IG Certification, since January 21, 2020.

Geographical Indication is a name or sign indicating the area of origin of a product which due to geographical environmental factors, including natural factors, human factors and the combination of these two factors, regulates the quality and characteristics of the resulting product. Celuk silver craft has the characteristics of raw material criteria, namely silver with a minimum content of 92.5%, or gold with a minimum content of 18 carats. - Basic motifs, namely the basic motifs of the Jawan motif, the Bun motif, the Gonda Fruit motif, and the Liman Paya motif. - Quality criteria, seen from tidiness and refinement, completeness and strength.

Silver Celuk Bali is a culture that belongs to the Bali region. There is an area in Bali that is famous for the silver celuk engraving profession, where when someone enters the village it will be shown about silver processing, visitors will be given education about how to make silver crafts and can also enjoy the Celuk silver museum. When a culture is recognized by a country, it can be traced about the history of that culture. This is related to the Appellations of Origin which means that a culture is influenced by the environment and ecological factors in the place of production. Law No. 20 of 2016 concerning Marks and Geographical Indications provides an explanation that each region or local government can apply for geographical indications considering that Geographic refers to the area of origin of goods due to geographical and human environmental factors that give certain characteristics and qualities to an item [3].

Geographical indication (GI) is an acknowledgment of a product (agricultural products, foodstuffs, handicrafts or other products, which have specific characters and qualities due to the area of origin. Products related to their geographical area, relationships based on natural factors, human factors or a combination of both factors “The uniqueness of a product is due to natural and human factors or a combination of these two factors. And it has developed for quite a long time and provides significant benefits for the community in the area of origin of the product.

### **3.2 Increasing Regional Original Income Through Wealth Protection Communal Intellectuals of Bali’s Leading Products**

The implementation of Law Number 23 of 2014 concerning Regional Autonomy makes each region have to increase regional income from both the tax and non-tax sectors. For that purpose, each region needs to immediately develop superior products and explore all the potentials of the existing regions as optimally as possible.

Even this, if not done properly, will be difficult to achieve considering that export activities to foreign countries will be required to meet current global issues, one of which is Intellectual Property Rights. Protection of superior regional products in the framework of increasing Locally-generated revenue (PAD) through good IPR management.

Good intellectual property management is a must and the key to success in developing and protecting regional superior products with the ultimate goal of increasing PAD. For this reason, each region must immediately realize it to support the implementation of regional autonomy which has already begun its implementation [4].

The concept that must be referred to at least contains the following steps:

- a. Identify all potential areas that exist
- b. Implementing a priority scale in developing superior products
- c. Provide a conducive business climate
- d. Support for strategic and realistic policies
- e. Provision of adequate facilities and infrastructure
- f. Guaranteed security and legal certainty

The initial steps that can be taken to realize the concept are as follows:

- a. Commitment to support from all elements of stakeholders
- b. Establishment of UPKI in each region or ask for assistance from existing HKI centers/IPR clinics/UPKI for its management.

The Bali Provincial Government also carries out efforts to protect culture. Article 16 of the Law for the Advancement of Culture stipulates that one form of protecting objects of cultural promotion is by recording and documenting. One of the follow-up actions of the Bali Provincial Government from the planned collaboration with Christian Dior is to compile a description document that contains an explanation of Balinese Endek weaving so that it can facilitate the identification process of Balinese Endek weaving.

There are several districts in Bali that have cultural expressions in the form of endek cloth, including: [5]

1. Jembrana: Manis Tutu, Dusun Dauh Waru, Banjar Ngoneng mendoyo Dauh Tukad.
2. Denpasar: Renon, Tohpati, Penatih, Denpasar Timur
3. Bangli: Bangli, Susut
4. Gianyar: Gianyar, Bona, Blahbatuh
5. Kelungkung: Sampalan, Gelgel
6. Karangasem: Sidemen
7. Buleleng: Singaraja, Sinabun

Communal Intellectual Property In the Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Communal Intellectual Property Data, Communal Intellectual Property, hereinafter abbreviated as KIK, is defined as Intellectual Property in the form of Traditional Knowledge (PT), Traditional Cultural Expressions (EBT), Genetic Resources (SDGs), and Potential Geographical Indications. In general, Communal Intellectual Property is Intellectual Property whose ownership is group, in contrast to other types of Intellectual Property whose ownership is exclusive and individual. Protection of Geographical Indications has been regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications, but until now there has been a legal vacuum, where there are no laws and regulations governing traditional cultural expressions.

Endek fabrics are divided into two types, namely Endek and Gringsing. Endek is a cloth that uses the weft tie technique, namely the weft part that is tied. Meanwhile, if gringsing uses a double tie technique, namely the warp and weft are tied. Endek cloth motifs in general usually adapt flora, fauna and geometric shapes with free colors. This motif can be enjoyed by everyone and is free to use for any event. Meanwhile, if the cepuk motif is a motif that is devoted only to traditional ceremonies. If the cloth will be used for a sacred event then the motif will definitely be made special. Today's endek fabrics are duplicates of previous fabrics but are modernized through a dyeing process.

Until now, weavers, especially in the Sidemen area, still use ATBM (non-machine looms) or also known as gojlek. The main characteristic of this weaving technique is the use of floral decorative motifs that are of interest not only to local people, but also to arouse the tastes of foreign people. The materials and processes are varied, made from hand-spun cotton, colored with synthetic dyes, and worked for a long time. The weaving is very tight, smooth and made with good patience, perseverance and thoroughness [6].

The Balinese Endek Woven Fabric has been registered as a Communal Intellectual Property of Traditional Cultural Expressions with NRE Inventory Number.12.2020.0000085 by the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia, December 22, 2020. The Balinese Endek Woven Fabric has a beautiful charm and motif, Recently, patterned cloth products such as endek have emerged which are not the result of Balinese handicrafts and are not based on local Balinese creative culture, which threaten the existence of Bali Endek Woven Fabrics and their craftsmen and business actors. For this reason, Balinese Endek Woven Fabrics need to be used and empowered economically in order to improve the welfare of the Balinese people. The government must also take sides and be committed to local resources by playing an active role in preserving, protecting, and empowering Balinese Endek Woven Fabrics/Balinese Traditional Woven Fabrics.

NRE works are very diverse in form and form, their scope is very wide, they can be expressed in the form of traditional food to traditional dance works. As long as the local community where the traditional knowledge grows and develops is able to realize and express it into a work of real expression that comes from traditional knowledge, it is included in the scope of the work of EBT. Traditional knowledge, if studied in depth, actually has strategic value for Indonesia, namely in terms of cultural, social and economic aspects. In terms of culture, the protection of traditional knowledge will be able to increase the preservation of the nation's culture. From the social aspect, the protection of traditional knowledge will allow the preservation of social values held by a society, regarding what is considered good and what is considered bad, including social values related to habits, beliefs, symbols, with certain characteristics that can be distinguished from one another. The strategic value related to the economy, the protection of traditional knowledge has the potential to increase the added value of foreign exchange. The strategic value of traditional knowledge related to the economic aspect will be more visible when the traditional knowledge has been expressed into works of traditional cultural expression [7].

As a form of communal intellectual property, Geographical Indications have their own characteristics compared to other communal intellectual property. Geographical Indication is a sign indicating the area of origin of an item and/or product which due to geographical environmental factors including natural factors, human factors or a combination of these two factors gives a certain reputation, quality, and characteristics to the goods and/or products produced. Signs used as Geographical Indications can be in the form of labels or labels attached to the goods produced. The sign can be the name of a place, area, or region, words, pictures, letters, or a combination of these elements. Objects for the Protection of Geographical Indications include Natural Resources, handicrafts, industrial products owned by a region but not owned by other regions in the Territory of the Unitary State of the Republic of Indonesia.

In essence, geographical indications are the same as other intellectual property rights, to convey a message from the product. In geographical indications, prospective b can find out where the product came from, because each product produced will show a certain place by showing special characteristics and characteristics that we can only find in certain places. Geographical indications are one way that can be used strategically to advance regional or national industries. Because in geographical indications there are special features of an area. Customers can see the privileges of an area if there is a group of an area whose members have exclusive rights to use a certain geographical indication.

Products from natural products as well as products made by humans, especially handicrafts which are communal intellectual property, geographical indications and expressions of traditional Balinese culture, have been registered. Celuk Silver and Gold Crafts have received Geographical Indication Certificates with proof of registration ID G 000000074, and Tunun gringsing has received Geographical Indication protection from the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights dated March 15, 2016, with registration number IG.00.2015. 000015. In addition, Kain Endek has also received the Protection of Communal Intellectual Property of Traditional Cultural Expressions with an EBT Inventory Number.12.2020.0000085 by the Directorate General of Intellectual Property, Ministry of Law and Human Rights

of the Republic of Indonesia in the Directorate General of Intellectual Property with a Number which from an economic perspective can also increase the power the competitiveness and economic value of the product itself compared to similar products that have not received geographic indication certification. Furthermore, the Bali Provincial Government has also taken a progressive step by registering Endek Bali weaving as KIK at the DJKI Ministry of Law and Human Rights of the Republic of Indonesia with the inventory number of traditional cultural expressions/EBT 12.2020.0000085 on November 22, 2020. Registration of Bali Endek weaving as community KIK Bali can prevent misappropriation [8].

## References

1. [https://litbang.kalbarprov.go.id/artikel/artikel/urgensi-perlindungan-hki-komunal#:~:text=Kekayaan%20intelektual%20komunal%20\(KIK\)%20adalah,%3B%20Adawiyah%20%26%20Rumawi%2C%202021\)%3A](https://litbang.kalbarprov.go.id/artikel/artikel/urgensi-perlindungan-hki-komunal#:~:text=Kekayaan%20intelektual%20komunal%20(KIK)%20adalah,%3B%20Adawiyah%20%26%20Rumawi%2C%202021)%3A)
2. Modul Kekayaan Intelektual Komunal, 2019, Direktorat Jenderal Kekayaan, Jakarta.
3. <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1154&context=dharmasiswa>
4. Erlina B. et.al, 2020, Pusaka Media, Jakarta.
5. Supasti Dharmawan, 2015, Ekspresi Budaya Tradisional Endek dalam Perspektif Perlindungan Hak Cipta, Alsa, Denpasar.
6. Putu Sifra Ayu Mareta, 2018, Perancangan Media Komunikasi Visual Sebagai Sarana Promosi Tenun Ikat (Endek) Desa Sidemen Karangasem, Bali.
7. Ida Ayu Sukihana, I Gede Agus Kurniawan, 2018, Karya Cipta Ekspresi Budaya Tradisional Studi Empiris Perlindungan Tari Tradisional Bali di Kabupaten Bangli
8. Dina W. Kariodimedjo, 2022, Pelindungan Dan Pemajuan Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional Indonesia : Penggunaan Tenun Endek Bali Oleh Christian Dior

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