

The Protection Of Intellectual Property Rights On Local-Wisdom Based Crafts In A Tourism Village In Cirebon, West Java, Indonesia

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Abstract–Cirebon is one of the regions that have historical and cultural lushness so that it has a huge amount of tangible and intangible local wisdom. In its development, some regions are developing their regions as the tourism villages with the main commodity of handicrafts deriving from their own cultures. That local wisdom-based village is Sitiwinangun Village with its earthenware crafts. This potential needs the protection of Intellectual Property Rights to strengthen their existence mainly in the ASEAN Economic Community. This research discusses the protection of intellectual property rights of handicrafts in the tourism village, the implementation of government, and factors supporting the Intellectual Property Rights in the tourism village in Cirebon. The research method uses the empirical juridical one. The outcome of this research shows that Local Government has not given the intellectual property rights to the local crafters. The protection effort is made by the initiative of the community through the stakeholders. Limited knowledge of the community on the Intellectual Property Rights does not make them protect their work and they consider the intellectual property rights an expensive process. Moreover, they disregard if other people take their models and designs. They need legal guidance from government, stakeholders, and public education from universities in Cirebon.

Keywords: *Legal Protection, Intellectual Property Rights, Local Wisdom*

INTRODUCTION

Indonesia is a country rich with its crafts as the symbol of cultural richness resulted from various creative ideas on cultures in Indonesia. This makes Indonesia considered having more advantages than other countries since Indonesia has complete and various cultural portraits as the work of its custom people where they are part of the Intellectual Property Rights, which later will be called as HKI or *Hak Kekayaan Intelektual*. The Intellectual Property Right is creativity resulted from the thinking skill of people to fulfil their needs and prosper their lives. (Kholis Roisah, 2011). Having the status as either individuals or part of the community, that creativity is part of the talents and cultures.

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The creativity of this earthenware crafts is a potential that needs the protection of Intellectual Property Rights to strengthens their existence mainly in the ASEAN Economic Community. The peoplemakingearthenware in

Sitiwinangun Village of Jamblang District, Cirebon, is real evidence that every culture or civilization, the people must have something interesting to be observed and learned. The cultural evidence has its uniqueness compared to the people of other regions.

One of the most interesting issues that are currently developing in the Intellectual Property Right area is the legal protection on the intellectual property resulted by native people or the traditional ones based on local wisdom. The intellectual richness of local wisdom resulted by traditional native people covers various things starting *traditional knowledge*, art works, and *indigenous science and technology* (Rahayu Hartini, 2005). In this case, the community has thought creatively about how to make innovative works while keeping and highlighting the national heritages. However, its legal protection is not accommodated in the regulation of Intellectual Property Rights mainly in the international scope.

The protection of human creativity aroused as someone's intellectual assets has given a significant influence on the human civilization marked by *inventions* and *art and literary works*. The more developed someone's creativity, the more developed the human civilization. Finally, it needs recognitions and rewards on someone's creativity work based on

legal commonly known as the legal regime of Intellectual Property Rights. This law gives protections to the works of inventors or other makers of other parties illegally use and utilize the works. Also, the legal regime of HKI gives an opportunity to protect the economic interests based on inventions or works of the inventors or makers.

The legal protection is someone's right to get protections from other people or state if he or she has fulfilled all requirements stated in the decree. The legal protection is aimed at giving the drive to create more innovative inventions or works. The scopes of the legal regime are patents, brands, industrial designs, Property Rights, Trade Confidentiality, layout designs of circuits, and plant varieties. Since many countries joining TRIPs menunjukkan, it shows that the international community is aware on the HKI protection and it gives an impact on the efforts to improve the protection of HKI in either local or national levels in Indonesia.

In the past decades, Indonesia ratified international agreements on HKI, made some revisions, and issued new decrees on HKI. The problem aroused in the earthenware crafts is on how to give those intellectual Property Rights as part of the traditional richness that has a huge number of traditional values as part of local wisdom or cultural heritages developing continuously.

The selection of Sitiwinangun Village in this research is that this village is the center of handicrafts mainly the earthenware crafts in Cirebon. Therefore, the researchers feel that the selection of this village is the appropriate research object and the researchers need to know more about the protections of Intellectual Property Rights as part of the creativity of the people of Sitiwinangun Village, which is based on local wisdom.

METHODOLOGY

The approach methodology used in this research is empirical juridical, which is research based on decrees or documents related to the implementation and factual conditions in the field. The methods to obtain data in the field are field observations, legal study, and documentation study. This research is located in Sitiwinangun Village of Jamblang District, Cirebon Regency. The population of this research is the stakeholder that protects HKI of the native or traditional people Cirebon Regency and the community as the earthenware crafters. Its target population consists of Local Government of

Cirebon Regency that is related to the efforts to protect the Intellectual Property Rights of native or traditional people and in this case, they are Head of Sitiwinangun Village, Head of Industry and Trade of Cirebon Regency, and Head of Youth, Sports, Culture, and Tourism Agency of Cirebon Regency. The method of gaining samples is conducted by using the *purposive sampling*. The primary data is obtained through interviews while the secondary data is obtained through the literature study. Those data are then analyzed interactively using the source triangles.

RESULT AND DISCUSSION

The tradition to make earthenware crafts has been made by the ancestors of Sitiwinangun Village who had an agricultural culture for an indefinite time. According to the history, as stated by Mr. Sutrija as Head of Sitiwinangun Village, the native creator of these earth products was Prince Panjunan who had a skill to make art works in the form of earthenware and this skill was inherited to his students, Prince Jagabaya. This skill was then inherited to his descendants. Sitiwinangun itself derives from Ancient Javanese. Siti means earth while Wangun is the form. Therefore, Sitiwinangun means the "formed earth."

According to the anthropologist Ralf Linton, a culture is a way of life of the people. Therefore, one of the products of a culture is creativity. The way of life, in this case, is not only a biological life but also a *way of thinking, way of feeling, and way of doing*. The local wisdom itself is part of the culture of the people, and it cannot be separated from their language. (Ahmad Baedowi, 2015).

Therefore, the fact of local wisdom is usually inherited from one generation to one another and from mouth to mouth, the local wisdom can be found in folklores, proverbs, songs, art works, and traditional games (AS Padmanugraha, 2010). The local wisdom of knowledge is found by a specific local community through the collection of experience to try, and it is integrated with an understanding of culture and condition of an area.

Based on an interview with a crafter, earthenware is a handicraft using clay as the main material, which has a high value so that it does not need to be processed (Miskadna, 2017). Collective people known as gotong-royong make the combustion of earthenware, and each family has an opportunity to be a combusting coordinator. A family will have a turn to burn its raw material of earthenware after the group

makes a decision. The other crafting families are obliged to help this combustion activity.

A skillful crafter is usually appointed by the group to work as the combusting coordinator. The other various tasks are deciding the day and time of combustion. The time is never told specifically but referring to the prayer time or adzan (a prayer call) from the mosque like after dzuhur and ashar prayers. The other tasks are to prepare combusting materials like hay, dry leaves, and other materials for a single combustion. Those raw materials of earthenware like a big jug and small moneyboxes are made.

Managing raw materials of earthenware to resemble a hill is not easy work since the wrong setting in the combustion will make the earthenware broken. Also, if the owner of earthenware has set it well, the broken earthenware will be covered hay and dry leaves. This makes the combustion go fast, and without orders, all people will shift the hay to make the fire keep burning and have a high hot temperature.

Therefore, the combustion reaches its climax when the burnt earthenware has become a fire flare, which is translucent red and this makes the combustion natural. Also, they never use any tool to measure the temperature and time of combustion. However, based on the basic principles, the combustion of earthenware has fulfilled all basic requirements. When the fire flare is on the peaks, crafters will keep the fire to make the temperature well maintained.

If the hot temperature decreases drastically, the earthenware materials will be broken immediately. To avoid it from wrecked, the fire is decreased gradually by watering the water circle slowly, which is around the combustion to make the fire decrease. At the same time, the fire flare from hay will decrease for 40 minutes marking the completed combustion

The protection of HKI on earthenware crafts that refers to the legal principles of intellectual property rights generally can be obtained from the principles of patents and industrial property legal that now exists in both national and international levels. Moreover, in 2015, Sitiwinangun Village was chosen as the tourism village by the Deputy of Coordinating Ministry of Human Development and Culture and Deputy of Cooperative and UMKM Ministry. This has made the earthenware potentials bigger and it can be considered in both national and international levels (Sutrija, 2017). When talking about the legal system, most of us refer to

Lauerence M.Friedman who mentions three elements, which are the legal substances (material/legal contents), structures (legal apparatus/state apparatus), and legal culture (Lawrence M.Friedman,1984).

A.The Protection of Earthenware Crafts through the Patent Regulations

Protection is someone's right to get protection from other people or state if he or she has fulfilled all requirements stated in the decree. The legal principles of patents can be found in *the Berne Convention for the protection of literary and the artistic works* (Berne Convention 1967) that regulates the possession concept on traditional patents even though it does not regulate the protection of earthenware crafts. The provisions in the Berne Convention of 1967 are applied in the cultural expressions whose inventors are indefinite.

The patent protection in Indonesia has been regulated in some distributed decrees. However, by the end of 2014, the patent decrees applied in Indonesia gave hope to protect cultural expressions. A patent is an exclusive right of an inventor aroused automatically based on declarative principles after an invention has been made without reducing the limits according to the decrees.

The creations are protected by patents as an exclusive right especially given to creators, patent holders, or other parties using that right as agreed by the creator. The protection of cultural expressions is regulated in Article 38 of Decree No. 28 of 2014 concerning with the patents as follows:

- 1) Patents on cultural expressions of traditional cultures are kept by the state
- 2) The state is obliged to make an inventory, keep, and maintain the cultural expressions of tradition as stated in Article 1.
- 3) The use of cultural expressions of cultures as stated in Article 1 should consider the values living in the society as the holder
- 4) Further regulations on patents on cultural expressions of traditions are kept by the state as stated in Article 1 regulated by governmental decrees.

After registering, the work of cultural expressions also receives protections like the other works. State as the holder of cultural expressions receives an exclusive right to that work. Two ways can define the sustainability of a state, namely, the first is to preserve the existing

condition that prohibits changes and secondly, the continuity of a Indonesia means deeply so that it can survive from time to time, develop the country, and defend from changes and external and internal outbreaks. Consequently, it gives happiness and life continuity to the world community (Sorjono, 1985).

This time, a patent has developed and contributed something that has cultural, economic, aesthetic, creativity and historical values so that it can give states of developed countries additional income. The economic value of a patent gives protections to the creators to enjoy the work materially. The cultural expressions also have promising economic potentials mainly those that are related to tourism and economic industries like the woodcarving, silver carving, and other crafts. These products contribute significantly to the state's foreign exchange.

Different from patents, the cultural expressions generally have wisdom values in the inter-human relations, with nature, and God. The cultural expressions are developed and made as the cultural identity by the local or traditional people of Sitiwinangun Village. Indonesian Government regulates the cultural expressions in Article 38 of Patent Decrees of 2014. The protected cultural expressions cover one or the combination of the following cultural expressions (Junindra Indriati, 2015) :

1. Textual verbal, either oral or in written, in the forms of proses or poets with various themes and contents that can be a literature or information narrative;
2. Music that includes vocal, instruments, or the combination of both;
3. Movements that cover dances, self-defenses, and games;
4. Teathers that cover the puppet shows and folklores;
5. Fine arts of ether two or three dimensions made of various materials like leathers, woods, bamboo, metals, ceramics, paper, textiles etc. or the combination of them; and
6. Traditional ceremonies that cover tools, materials, and deliveries.

The mentioned protections are all efforts to protect cultural expressions, the illegal utilization that breaks appropriateness. The protection of cultural expressions as the traditional knowledge is very essential having three main reasons, which are : (Agus Sarjono, 2006)

1. An economic profit resulted from the utilization of traditional knowledge;
2. Justice in the world trade system; and
3. The needs to protect the rights of the local community.

Based on the research outcome of the researcher, the type of traditional handicrafts of traditional people of Sitiwinangun Village automatically receives protections of patent as the cultural expressions. The moral and economic rights of this earthenware of the patent holder, which is the state, are the caretaking community. However, to strengthen the protection of earthenware belonged to the people of Sitiwinangun Village, it is necessary to publish widely to the local and international communities. Local Government needs to register that earthenware o have patented. Truthfully, registering a patent is not necessary since a patent is declarative. However, this is important as the possession evidence when the cultural claims made by other countries or private parties that want to take economic advantages from the use and utilization of that earthenware directly or derivatively occur. However, the protection based on this patent law cannot be realized.

Hitherto, Local Government of Cirebon Regency does not have documents and database confirming the traditional earthenware of the community. The government has not made art and cultural inventories of custom people comprehensively and integrally. To show its seriousness in protecting earthenware, Local Government of Cirebon Regency and its Legislative should make bills that give an intellectual property on cultural expressions (earthenware) and the documentation process must be made by respecting the local communities if they do not want their labelled earthenware to be documented due to its privacy and holiness.

Generally, the law protection of earthenware conducted by Local Government of Sitiwinangun Village is still defensive which is conducted by documenting and registering data. The current data registration is developed locally, not externally. Accordingly, this defensive protection should be followed by a positive protection, which is making the law of local regulation describing the protection of earthenware or other cultural expressions. However, Local Government of Cirebon Regency has not created this kind of law. The local

government only acts to safeguard them to protect the cultural assets from extinction.

B.The Implementation of Local Government and Supporting Factors of HKI on Earthenware

Through autonomy, local governments are expected to be more independent to determine the objectives of their activities. They are expected to play their roles to open an opportunity to improve local cultures by digging the cultural source potentials mainly the cultural sources in the forms of cultural expressions. If they are creatively managed, the earthenware crafts of Sitiwinangun Village will be comparative as the competitive products.

Referring to the policies of governmental programs to empower the village communities, Local Government of Cirebon Regency along with the House of Representatives makes local regulations to protect the earthenware crafts or other cultural expressions so that they can benefit the stakeholders morally and economically. Therefore, the use of cultural expressions will directly affect the developing custom community where that community lives.

The development of Cirebon Regency as an integral part of the national development cannot be separated from the autonomous principles. In making a wide and responsible, autonomous region in the field of culture mainly the cultural expressions, it must collaborate with the intellectual property right institution. Even though the intellectual property rights dominate the individual rights instead of the community rights, the intellectual property rights should refer to HKI principles, which are justice, economic, cultural, and social principles.

According to the principles of HKI, Local Government of Cirebon Regency, which has been given wider autonomy to run the government, can protect the cultural expressions of the customary people of respective regions under HTI protections mainly the intellectual property referred to HKI principles without reducing the rights and values enlivening in those communities. According to the outcome of field research that has been gained by the writer, Local Government of Cirebon Regency has not made some efforts to protect the cultural expressions, and earthenware crafts since the human resources of Local Government are limited. According to H. Deni Agustin, SE., MM. (Deni Agustin, 4/11/2017), the database and

inventory of models and types of earthenware are not well filed by local Government.

However, an effort to preserve and improve the capacity of earthenware crafters to attract more local and international tourists has been conducted. Local Government actively guides and trains them conducted locally or outside its region. Also, the efforts made by Youths, Sports, Culture, and Tourism Agency are introducing the traditional crafts of Sitiwinangun Village to tourists of other cities visiting this village. This is one of the efforts of Local Government to help and preserve earthenware crafts to improve the quality of life of earthenware crafters as stated by H. Hartono, MM (Hartono, 2/11/2017).

The other factors that support the importance of protection and preservation of earthenware crafts are that these crafts have become the source of income of most people of Sitiwinangun Village so that the strengths and preservations are still available since these are part of their life. The people with the help of Local Government of Sitiwinangun Village keep preserving and improving the additional values of earthenware crafts by making the community group, marketing various models of earthenware, and sending representatives of earthenware crafters in the cultural and tourism exhibitions and other events that attract many people from other regions.

The purpose of sending them to those events is to make their earthenware crafts more recognized even though their work is duplicated or imitated by other people. The people of Sitiwinangun Village do not understand that the values of their cultural expressions can be protected and give them economic values for their prosperity. They only expect the Government to help them sell their creative products and keep the heritage value as their responsibility.

According to the field facts and the research outcome and discussion, Local Government along with the House of Representative of Cirebon Regency should file, gather data, and compile the cultural expressions or earthenware crafts as the work of the community of Sitiwinangun Village to make the protection in the legal system of intellectual property easier. The making of Local Regulation known as Perda made by Local Government as the defensive protection can help register the

earthenware crafts, which are of valuable to protect earthenware crafts in the Intellectual Property Rights accordingly. This shows the seriousness of Local Government to protect the cultural expressions or earthenware crafts under the legal system of intellectual property. This also gives an expectation and protection that the factors of heritage products can be commercialized and have a high economical value as the possession right and therefore, it gives the people of Sitiwinangun Village income mainly from the royalty that can improve their prosperity. In terms of increasing the capacity and skill of the crafters, local government can cooperate with universities around Sitiwinangun Village to equip craftsmen to know and protect the rights related to their copyright and registration procedures. Likewise with the role of Higher Education as part of the form of community service, so that between theory and application can be synchronized and applied as it should.

CONCLUSION

Based on the discussion and description stated by the writer, the conclusion can be drawn as follows:

1. The government of Cirebon Regency has not protected the cultural expression or earthenware crafts of the people of Sitiwinangun Village by registering or documenting them. However, the efforts to preserve and develop the earthenware crafts sporadically are still conducted by Cirebon Government through Industrial and Trade Agency in filing and documenting the earthenware crafts. It also sends the representatives of earthenware crafters in some exhibitions and capacity-development training to make nationally standardized earthenware in the national events under the supervision of Youths, Sports, Culture, and Tourism Agency. Therefore, the protection of earthenware crafts, which are the communal work of the community and are stated in Article 38 of Decree No. 38 of 2014 concerning with Intellectual Property, which is the protection of cultural expressions, is still not relevant. This refers to the current protections

of cultural expressions of the community are still in the forms of reservation and safeguarding to protect the moral rights and avoid them from extinction as the local tourism supporting factors.

2. The factors that support the earthenware crafts of Sitiwinangun Village are the earthenware crafts, which are the heritages so that the community will continuously preserve them by attending several exhibitions and training. However, in the concept of intellectual property rights, they do not know how to register their work since they do not have sufficient knowledge of that complicated procedure.

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