

Traditional Food Arrangements as Expressions of Traditional Culture

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ABSTRACT

Traditional Cultural Expressions have basically been protected through national law, but in their regulation traditional food is not included as part of Traditional Cultural Expressions even though traditional food is one of Indonesia's traditional cultures that also characterizes the Indonesian Nation. For this reason, it is important to study the norms that occur in this study. The purpose of this study is to analyze the traditional food protection arrangements as traditional cultural expressions and the legal consequences that will occur if a traditional food is not listed as part of traditional cultural expressions. The method in this study uses a type of normative juridical legal research with a statute approach that focuses on the study of statutory regulations regarding legal issues in this study. The sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. The results of this study indicate that traditional food regulation has not been regulated as Traditional Cultural Expressions in the law in force in Indonesia precisely in Law No. 28 of 2014 concerning Copyright. The absence of arrangements related to traditional food as Traditional Cultural Expressions results in foreign parties or other countries easily recognizing the tradition, so it is necessary to regulate traditional food as Traditional Cultural Expressions.

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1. INTRODUCTION

IPR or Intellectual Property Rights starts from the term IPR or Intellectual Property.¹ IPR comes from the work of the mind which then creates a product, item, or process that has a use-value for humanity.² Indonesia has a high asset in terms of culture. The traditional term comes from the word tradition or traditum which means something

¹ Yessiningrum, W. R. (2015). Perlindungan Hukum Indikasi Geografis Sebagai Bagian Dari Hak Kekayaan Intelektual. *Jurnal IUS Kajian Hukum dan Keadilan*, 3(1) pp. 43

² Ibid

that is passed on from the past to the present.³ The dignity of a nation will be seen in how the community appreciates the existing culture. Diverse culture comes from the geographical location and also the ethnic differences that exist in Indonesia.⁴ Culture in Indonesia includes traditional works of art. The growth and development of traditional work in a region which is generally developed continuously and continued until the next generation of descendants, can not be separated from the existence of traditional knowledge known to the people in the region.⁵ The culture then becomes an indicator of social and cultural identity based on the customs and habits of the people in certain areas.⁶

In Copyright Law, traditional copyrighted works are known as Traditional Cultural Expressions, hereinafter referred to as EBT. EBT is a traditional cultural heritage that has economic value if it continues to be developed and valuable because it is an ancestral heritage. So that an EBT is very important to be maintained so that the culture can be sustainable and passed on to future generations. EBT is a designation used by the World Intellectual Property Rights, hereinafter referred to as WIPO in every world meeting. The use of the term EBT as stated by WIPO is a form of providing an understanding of copyrighted works created and developed by traditional societies which are then called traditional copyrighted works.⁷

EBT is legally given protection by the entry into force of the Copyright Act which at the moment the latest amendment is Law No. 28 of 2014 concerning Copyright (UUHC). UUHC provides protection for all matters relating to a work or copyright including EBT. The EBT arrangement is discussed in Article 38 which basically stipulates that the state is obliged to carry out an inventory, maintain and maintain every EBT work and the copyright for each EBT work is contained or controlled by the state. Provisions regarding Copyright which are controlled by the state on EBT will further be specifically regulated by Government Regulation. However, after an inventory of all regulations related to Copyright has not yet been found that there are Government Regulations that specifically and further regulate EBT.

³ Emy Handayani. (2019). Social Change of Traditional Communities in the Direction of Modernization in the Anthropological Approach to Law. *Musamus Law Review*, 1(2), 95-104. <https://doi.org/10.35724/mularev.v1i2.1197> pp 97

⁴<https://www.kompasiana.com/fridawahyumi/5b1263ebcaf7db64006cf1c3/moeldoko-kesenian-dan-kebudayaan-adalah-aset-negara-untuk-kemajuan-bangsa>. Accessed April 7, 2019

⁵ Sukihana, I. A., & Kurniawan, I. G. A. (2018). Karya Cipta Ekspresi Budaya Tradisional: Studi Empiris Perlindungan Tari Tradisional Bali di Kabupaten Bangli. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 7(1). Doi: 10.24843/jmhu.v07.i01.p05, pp. 52

⁶ Paramiswari, A., & Purwani, S. (2019). *Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta*. Kertha Semaya : *Journal Ilmu Hukum*, 7(1). Doi: 10.24843/KM.2018.v07.i01.p04, pp. 3.

⁷ Dharmawan, N. K. S. (2018). *Harmonisasi hukum kekayaan intelektual Indonesia*. Tabanan : Swasta Nulus, pp. 30-31

Elucidation of Article 38 Paragraph (1) states that the UUHC included in the EBT includes all forms of expressions whether verbal or written textual in the form of prose or poetry, it can also be in the form of literary works or also an informative narrative; music; motion; art; and traditional ceremonies. However, the EBT explanation does not include traditional food as part of the EBT even though Indonesia is rich in traditional food. Bali, as part of the State of Indonesia, has a diverse culinary culture, a type of food that is very famous in Bali, for example, is Lawar.

Lawar is a type of traditional food in Bali Province which is not only made for consumption but also used in traditional ceremonies. The importance of regulating traditional food protection as part of EBT is so that authentic foods in Indonesia cannot be recognized by other countries as typical foods of that country. A few years ago there had been a claim against Indonesian food made by Malaysia.

Rendang, which is a traditional food from West Sumatra, is claimed by Malaysia as a cultural heritage from Malaysia, this is because many Indonesians live in Malaysia which incidentally originates from West Sumatra and cooks typical West Sumatra food, rendang because the intensity of making rendang is increasing in Malaysia. , it became a breath of fresh air for Malaysia to recognize rendang as typical Malaysian food.⁸ So that traditional food should be included as part of EBT.

In addition, the UUHC itself does not provide a limited understanding of the definition of EBT itself. This, of course, gives rise to different interpretations of EBT. Thus, this research will discuss several things including the regulation of traditional food protection as an expression of traditional culture and the legal consequences if traditional food is not included as part of the expression of traditional culture.

This research is an original scientific work that has the hope to be able to contribute and contribute to the addition or development of science. Some of the previous studies that have examined EBT are found in the Law Journal of Udayana University, which explains the existence and implementation of Article 38 of Law No. 28 of 2014 concerning Copyrights relating to the protection of a performance art in the form of traditional dance in Bangli Regency, and several factors that influence the implementation of the protection of traditional dance performance artworks as an expression of traditional culture in Bangli Regency. Secondly, the Journal of the Master of Law at Diponegoro University, which explains the arrangements for the legal protection of knowledge and EBT to improve people's welfare in terms of Law Number 5 of 2017 concerning the Advancement of Culture and Law Number 28 of 2014 concerning Copyright. Next is the Legal Journal of Independent Yustisia Merdeka Madiun University which in this study explains the criteria of traditional cultural expression and legal protection against EBT in Intellectual Property Law. This study aims to analyze the traditional food protection arrangements as EBT and the legal consequences that will occur if a traditional food is not listed as part of traditional cultural expressions.

⁸<https://www.liputan6.com/citizen6/read/2156339/8-warisan-budaya-indonesia-yang-pernah-diklaim-malaysia>. Accessed May 7, 2019

2. METHOD

Writing scientific papers related to the regulation of traditional food protection as an expression of traditional culture using this type of normative juridical legal research. Normative juridical research is a study that focuses on the analysis of legal materials in the form of all types of regulations that apply in Indonesia as the main reference material in the research.⁹ A normative juridical research study can also be said as a research procedure that uses the logic of legal science from a normative perspective to find the truth, it is then able to explain the urgency of legal protection against traditional foods as part of EBT.¹⁰ The approach used in this study is the statute approach, which is research that focuses on the study of legislation related to the legal issues in this study. The sources of legal research materials consist of primary, secondary and tertiary legal materials. This research has the descriptive nature of analysis which provides a description of the problems discussed in this study and analyzes the relevant legal regulations to provide answers to the problems formulated. The overall data obtained will be analyzed qualitatively.¹¹

3. RESULTS AND DISCUSSION

3.1 Traditional Food Protection Arrangements as Expressions of Traditional Culture

The Unitary State of the Republic of Indonesia is a law-based country and not based on power only.¹² Protection of IPR is the protection of all rights obtained from the results of human creativity and intellect in the field of science and technology or science and technology, and also in the fields of industry and trade. All types of copyrighted works originating from the human intellect are the object of IPR.¹³

As an archipelagic country, Indonesia is very rich in diversity of cultural arts, ethnicity, religion, ethnic groups, all of which are potential states that need to be developed and must be protected. Everything that manifests a person to add to the rich nature of human thoughts and feelings is what is called cultural work.¹⁴ These works then become the characteristics of the Indonesian nation which provide lessons related to traditions, values, wisdom, communal knowledge which are then packaged and passed down to subsequent generations including through legends, saga, art, and

⁹ Soekanto, S. (2010). *Pengantar Penelitian Hukum*. Jakarta : UII Press, pp. 201.

¹⁰ Ibrahim, J. (2011). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang : Bayu Media, pp. 57

¹¹ Julianto Jover Jotam Kalalo, Chyntia Novita Kalalo. (2018). Legal Protection Against Health Workers in Taking First Aid Medical Measures. *Musamus Law Review*, 1(1), 40-52. <https://doi.org/10.35724/mularev.v1i1.1076> pp.42

¹² Andi Bau Inggit AR, A Pangerang Moenta, MArwati Riza, Hamzah Halim. (2017). Local Regulation Review in Realizes Legal Order of the Local Governance. *Journal of Law, Policy and Globalization*. Vol. 59: 214-219

¹³ Firmansyah, M. (2008). *Tata Cara Mengurus HaKI*. Jakarta : Visimedia, pp. 7.

¹⁴ Hozumi, T. (2006). *Asian Copyright Handbook : Buku Panduan Hak Cipta Asia Versi Indonesia*. Jakarta : Ikatan Penerbit Indonesia, pp. 12.

ceremonies that will increasingly form the social norms and life order of the Indonesian Nation or can be called the Traditional Cultural Expressions.¹⁵

EBT comes from three (3) words namely expressions, culture, and traditional. The first expression, the expression has meaning that is expressing both ideas and feelings. Secondly, culture, words have a similarity between culture in English and culture in the Indonesian sense.¹⁶ The word culture is actually previously known as Buddhism which means the mind or can also be called intellectual from Sanskrit.¹⁷ In essence, culture is defined as the things created by the results of human thought and human intellect that aims to maintain and develop their lives in their environment.¹⁸ Third, traditional is the attitude or action and way of thinking that follows the norms/rules and customs of habits in a region and lives in society for generations as listed in KBBI or the Big Indonesian Dictionary.¹⁹

Protection against EBT is a problem that is also addressed to international forums related to IPR because IPR itself contains high value both in terms of economy and culture that is in traditional knowledge or traditional knowledge.²⁰ Most of the leaders in the field emphasized that it is not right to protect EBT because EBT is a regime whose communal protection concept is different from the work of individuals whose individual protection concept.²¹ Therefore, for further development, the creation of laws specifically protecting Traditional Knowledge and Traditional Cultural Expressions is necessary. While waiting for the special law that has just come into force to protect EBT in Indonesia, it is very important to utilize the existence of UUHC to protect EBT in Indonesia including traditional food.

¹⁵ Kementerian Hukum dan Hak Asasi Manusia Kantor Wilayah Jawa Barat. *Perlindungan Ekspresi Budaya Tradisional di Jawa Barat*. Available from <https://jabar.kemenkumham.go.id/berita-kanwil/berita-utama/perlindungan-ekspresi-buda-ya-tradisional-di-jawa-barat>. Accessed June 11, 2019

¹⁶ Badan Penelitian dan Pengembangan HAM Kemenkumham. (2013). *Perlindungan Kekayaan Intelektual atas Pengetahuan Tradisional dan Ekspresi Budaya Tradisional Masyarakat Adat*. Bandung : Alumni, pp. 23.

¹⁷ Koentjoroningrat. (2009). *Pengantar Ilmu Antropologi*. Jakarta : Rineka Cipta, pp. 69.

¹⁸ Atsar, A. (2017). *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(2). Doi: 10.14710/Ir.v13i2.16162, pp. 290.

¹⁹ Kamus Besar Bahasa Indonesia. Available from <https://kbbi.web.id/tradisional>. Accessed June 7, 2019

²⁰ Bachtiar, F. (2011). *Perlindungan Hukum Ekspresi Budaya Tradisional (Folklore) Dalam Rangka Pemanfaatan Potensi Ekonomi Masyarakat Adat Jepara*. Tesis. Universitas Indonesia, pp. 57.

²¹ Dharmawan, N. K. S. (2017). *Protecting Traditional Balinese Weaving Trough Copyright Law: Is it Appropriate?*. Diponogoro Law Review, 2(1).72, pp. 2-3.

In general, traditional knowledge is the knowledge that has long lived in traditional societies because it was developed by the community itself, and is considered an asset that has economic value.²²

Every country including developing countries has tried to provide protection for every traditional knowledge. Some countries including Panama, this country issues laws that protect traditional knowledge, that each user of traditional knowledge must obey the rules issued by the indigenous group as the owner or holder of the traditional knowledge. Next is Peru, this country also issues a law that states that every person, community or country that will use a traditional knowledge is required to obtain approval from the community that has traditional knowledge and makes an agreement to use it.²³

In WIPO, traditional knowledge refers to a broader range of knowledge, not only to one knowledge. Attachment to a community that separates traditional knowledge from other knowledge and this is what gives a hereditary or traditional nature. Traditional knowledge is created, used, maintained, and given protection in the traditional sphere and generally refers to the knowledge that has been accumulated by the community through a long process of experience in a particular location.²⁴

Indonesia certainly needs legal protection against EBT this because Indonesia is in the position of developing countries. Such protection will be an action to ensure the sustainability of the cultural heritage and creativity of a community group (communal).²⁵ There are two things that are done as an effort to protect traditional knowledge, namely, the first protection is carried out by means of a documentation or inventory system of existing traditional knowledge, this can be used as legal evidence not only as an informative function for short-term protection; then by issuing special regulations that protect traditional knowledge, by creating more specific laws and regulations is one way of fighting for national interests up to the international level for medium and long-term protection.²⁶

²² Mahila, S. (2017). *Traditional Knowledge Dalam Sistem Hukum Hak Kekayaan Intelektual Indonesia*. Jurnal LEX SPECIALIS, pp. 35.

²³Ika. (2009). *Perlindungan Pengetahuan Tradisional di Indonesia Perlu Aturan Tegas*. Available from <https://www.ugm.ac.id/id/berita/671-perlindungan-pengetahuan-tradisional-di-indonesia-perlu-aturan-tegas>. Accessed July 3, 2019.

²⁴ Ibid

²⁵Saidin, OK. (2006). *Aspek Hukum Kekayaan Intelektual (Intellectual Property Right)*. Jakarta : PT. Raja Grafindo Persada, pp. 78.

²⁶ Riswandi, B.A. dan Lutviansori, A. (2008). *Mempersoalkan Perlindungan Traditional Knowledge*. Available from <https://www.hukumonline.com/berita/baca/hol20725/mempersoalkan-perlindungan-itraditional-knowledge/>. Accessed June 7, 2019

In general, there are five reasons traditional knowledge must be protected, among them:²⁷

- 1) Fairness (equity)
For a traditional knowledge whose knowledge is used or commercialized, it gets a share of the results of the commercialization, either monetary or non-monetary.
- 2) Conservation
Protection of traditional knowledge also means protection of the environment, sustainable agricultural activities, and biodiversity.
- 3) Maintaining Traditional Practices and Culture (Preservation)
Protection for traditional knowledge can be used to increase the level of public trust in the values of traditional knowledge within and outside the community
- 4) Minimize Bio-Piracy (Avoiding Bio-Piracy)
One solution to minimize the practice of bio-piracy, while ensuring balanced treatment and fairness towards the owners and users of traditional knowledge is to provide protection against traditional knowledge.
- 5) Documentation of traditional knowledge is carried out by developing a Traditional Knowledge Database including:
 - a. Mandatory inclusion of the name or region of the product originating from which an application for legal protection is requested through intellectual property; and
 - b. Towards groups, groups, or communities seeking legal recognition of a product, they must be able to show evidence of an agreement to utilize and share the results of the owners of traditional knowledge.
- 6) As a Business of Promotion the Importance of Developing and Utilizing traditional knowledge

The government must have a goal to provide support for the use and development of traditional knowledge (traditional knowledge) in addition to trying to provide protection by limiting access to traditional knowledge.

Legal protection is everything that provides protection for all rights holders or liability holders in the form of positive law that is enforced and enforced by giving sanctions for any violations committed.²⁸ This is in line with the purpose and nature of the law itself, which provides protection and protection for the community. So that is realized by providing legal certainty for things that are still vague or have not provided legal certainty. The principle of legal protection basically covers two things, namely the principle of recognition and protection of human rights and the principle of the rule of law.²⁹

²⁷ Sofyanto, K. (2018). *Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi*. Kanun : Jurnal Ilmu Hukum, 20(1), pp. 155-156.

²⁸ Atsar, A. *Op. Cit.* pp. 291.

²⁹ Julianto Jover Jotam Kalalo. (2018). *Politik Hukum Perlindungan Hak Ulayat Masyarakat Hukum Adat di Daerah Perbatasan*. Makassar: Disertasi Universitas Hasanuddin. pp.

Regulations related to Traditional Cultural Expressions (Traditional Knowledge) are regulated through UUHC. In the concept of intellectual property, protection against EBT is different from protection in the types of the copyright of books, songs, and paintings. That is because the ownership of EBT itself is communal rather than individual which means that EBT is owned by a group of people in a certain area. In addition, the original creator in EBT is unknown because the culture arises from a tradition that continues to be passed on to subsequent generations, in contrast to other copyrights that have clearly been made to seek profit (profit-oriented).³⁰

The UUHC does not clearly regulate the definition of EBT itself, but in essence, EBT is held and controlled by the state, the state is obliged to carry out an inventory, safeguard, and maintenance of EBT and is obliged to pay attention to any values contained in customs and habits in society, and furthermore, EBT will be regulated by implementing regulations in the form of Government Regulations (PP). But it is unfortunate that until now there is not a single PP that regulates EBT. Furthermore, the UUHC in the Elucidation of Article 38 Paragraph (1) specifically mentions matters which constitute EBT is one or a combination of expressions in the form of verbal textual; music; motion; theater; art; or also in the form of traditional ceremonies.³¹

The contents of the UUHC as already mentioned do not mention traditional food as part of EBT. Even though traditional food cannot be released from the Indonesian people. A culture that makes a region or community proud if its existence is constantly examined and if it continues to be developed it can create the uniqueness of an area is a culture related to traditional food so that food is not only to supplement the daily necessities of life but also to preserve and preserve culture.³²

When viewed in terms of geographical indications, actually the regulations related to geographical indications have governed several matters concerning traditional food as stipulated in Article 1 Paragraph (6) of Law No. 20 of 2016 concerning Brands and Geographical Indications (UUMIG) states that in essence Geographical Indications are indicative markers of the area of a product that comes from supported by geographical environmental factors of the region so as to give reputation, quality, and characteristics to the product being created.

According to the contents of Article 1 number (6) of the UUMIG as above, it can be interpreted that a product or goods can get protection in the field of Geographical Indications if the product or goods produced in a geographical area has its own uniqueness or differentiation from other regions. Geographical Indications are those

³⁰ Asri, D. P. B. (2018), *Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta*. *Journal of Intellectual Property*, 1(1), pp. 17.

³¹ Baca Pasal 38 Ayat (1) Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta

³² Dewi, T. K. S. (2011). *Kearifan Lokal Makanan Tradisional : Rekonstruksi Naskah Jawa dan Fungsinya dalam Masyarakat*. *Manuskripta*, 1(1). Doi: 10.33656/manuskripta.v1i1.9, pp. 1.

used on product packaging and have a function as a pointer to the origin of the product being made. The origin of the area indicates that the conditions and situation of the area of origin have a major influence on the quality of products made in the region. So that the product is unique to many people, especially for consumers who know that the product originated region does have advantages or advantages in producing its products.³³

If analogous to the intended goods or products in the form of traditional foods, then the traditional food will get protection if the food is registered. Meanwhile, if traditional food is included as part of the EBT in the Copyright Act, the traditional food will directly get exclusive rights without having to be registered first. Exclusive rights are only owned by the owner or right holder of the product, which means that if you want to use or use that right to produce the product or product, you must obtain permission from the owner or right holder.³⁴ Although it would indeed be better if the product was registered. The inclusion of traditional food as part of EBT will certainly further ensure the legal certainty of traditional food in Indonesia. As is known that traditional Indonesian food is very rich in flavor and is very worthy to be given a higher level of protection.

3.2 Legal Consequences When A Traditional Food Is Not Listed As Part Of Traditional Cultural Expressions

EBT is basically a tradition that has been passed down from generation to generation without ignoring norms, customs, and habits and guaranteed by national legislation. Every traditional work, as well as all the techniques that have lived with traditional communities, are considered as valuable assets, especially economic value.³⁵ However, Puspitasari's research states that there is still no sharing of profits for traditional knowledge owners.³⁶ The government is not only responsible for safeguarding and protecting traditional knowledge as part of biodiversity, but also as part of the community of the region, which means that overall protection is given to its material form and ownership.³⁷

³³ Ayu, M. R. (2006). *Memperbincangkan Hak Kekayaan Intelektual Indikasi Geografis*. Bandung : PT. Alumni, pp 14.

³⁴ Supariyani, N. (2016). *Perlindungan Hak Kekayaan Intelektual Terhadap Tas Bermerek Yang Diimport Ke Indonesia*. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 5(2). Doi : 10.24843/JMHU.2016.v05.i02.p05, pp. 284.

³⁵ Sofyanto, K. *Op. Cit.* pp. 152.

³⁶ Puspitasari, W. (2014). *Perlindungan Hukum Terhadap Pengetahuan Tradisional Dengan Sistem Perizinan: Perspektif Negara Kesejahteraan*. *Padjajaran Journal of Law*, 1(1). Doi: 10.22304/pjih.v1n1.a3, pp. 3.

³⁷ Westra, L. (2012). *Environmental Justice and The Rights of Indigenous Peoples : International and Domestic Legal Perspectives*. Routledge, pp. 36.

Traditional food is a part of a culture that deserves protection. As an object of preserving tradition, traditional food is regulated through the Minister of Education and Culture Regulation of the Republic of Indonesia No. 10 of 2014 concerning Preservation of Traditions Guidelines, hereinafter referred to as Permendikbud No. 10/2014). Article 4 letter f states that traditional food is a type of food that uses natural raw materials whose manufacturing process is carried out with simple equipment by the local community in certain areas which can be interpreted that traditional food is one of the cultures that can be used as an identifier of an area.

The preservation of this tradition is one of the efforts in providing protection, development, and utilization of a habit created by local communities that supports the existence of that culture and then spread and passed down to the next generation, as mandated in Article 1 Paragraph (1) of the Minister of Education and Culture No. . 10/2014. In the case of preservation handed over to each region, the preservation includes protection, development, and utilization, this is regulated in Article 5 Permendikbud No. 10/2014.

The delegation of authority to the regions regarding the protection of traditional knowledge (traditional knowledge) has actually been arranged before in Law No. 32 of 2004 concerning Regional Government (UU Pemda) in Article 14 Paragraph (2) states that basically all the functions carried out by the district/city government relating to government affairs and have the potential to raise the level of welfare of citizens in accordance with the advantages or peculiarities of the area which implicitly concerns traditional food.

Furthermore Article 6 of Minister of Education and Culture Regulation No. 10/2014 in the protection of the tradition explains that the protection of the tradition is carried out with, recording, compiling, processing, and structuring information systems; register the culture (registration); conducting an assessment of the values in a tradition and national character; and enforcing positive law in force in Indonesia.

Law No. 5 of 2017 concerning the Advancement of Culture (UUPK) actually provides protection also for traditional foods as stated in Article 5 of the UUPK object in promoting culture, among others, oral traditions; manuscript or manuscript; customs; rite; traditional knowledge; traditional technology; art; language; folk games; and traditional sports. Furthermore, the general explanation of Article 5 letter e that basically traditional knowledge is an overall idea and opinion that has value by the local community, originates from real events between the community and the environment which are then developed continuously and passed on to the next generation. One part of Traditional knowledge based on UUPK is traditional food and drinks.

Arrangements related to traditional food in Permendikbud No. 10/2014 and UUPK have recognized the existence of traditional food as a culture that needs to be

protected. As a culture that is also the nation's character, it is proper to make traditional food a part of EBT. Moreover, Indonesia's traditional food today is not only favored by Indonesians but also favored by foreign guests, this is a matter of pride for this nation.

The non-regulation of traditional food as part of EBT and the lack of clarification of EBT through Government Regulations shows the weak protection of traditional food as a tradition and characteristic of the Indonesian people. So that it will make it easier for other countries to recognize or grant patents to Indonesian traditional foods. Some of these cases are patent cases against tempeh. Tempe is one type of traditional Indonesian food by using the main ingredient, namely soybean which is almost always on the dining table of the Indonesian people whose patents are owned by the United States.³⁸ Another case is the claim against rendang and cendol by Malaysia.³⁹ It automatically strengthens the opinion of this research that traditional foods need to be included as part of EBT so as to provide legal certainty.

If food is only given protection through Permendikbud No. 10/2014 has not been felt to touch and provide strong protection against traditional food itself. Even though Article 6 of Permendikbud No. 10/2014 it has been stated that the protection of tradition is protected by local governments through recording, compiling, processing, and structuring information; registering as a communal intellectual property; conducting a study of the value of national traditions and character; and enforcing the related regulations, but neither can the region immediately mention that the food is traditional food from the region. As an example of a case where tempe has patent rights owned by the United States, tempe exists in all regions in Indonesia, although it is said that the taste of tempe in each region is different, but its name remains tempe and does not change. This, of course, causes no region to propose tempeh as a tradition from the regions in Indonesia. The implication is that it will cause other countries to easily recognize the tradition, so it needs regulation related to traditional food as EBT. Traditional food arrangements as part of EBT in the law will be stronger in preventing the destruction, commercialization and unauthorized use by foreign parties.

With the growing era and easy access to travel, including culinary tours, it must be balanced with more stringent traditional food protection arrangements.

One solution is to include traditional food as EBT because it is not only movement or vocals that can express a culture, but the taste of traditional food is also able to express Indonesian culture. Not only that but in Indonesia, traditional food is also one thing that must be present in a series of traditional ceremonies. There are certain traditional

³⁸<https://www.kompasiana.com/nawawimnoer/5b94a150677ffb5ea968f392/heboh-tempe-tahukah-anda-hak-paten-tempe-bukan-milik-indonesia>. Accessed June 7, 2019.

³⁹<https://nasional.tempo.co/read/411854/malaysia-juga-klaim-rendang-dan-cendol/full&view=ok>. Accessed June 7, 2019

foods that must be present in a traditional ceremony, both as a form of gratitude and offerings that have philosophical significance for the ceremony. As stated in the Copyright Law that traditional ceremonies are part of the EBT. For this reason, it is important to include traditional foods as part of EBT.

The traditional food arrangement as EBT then needs to be clarified again in the Government Regulation as required by the Copyright Act. Arrangement of traditional food as EBT will indirectly protect traditional food without being requested because it automatically has exclusive rights guaranteed in law by the state. although it will be better than the tradition is registered so that the protection provided is stronger. With clearer arrangements related to EBT more comprehensively and regulating traditional food as part of EBT nationally, it will close the opportunity for every party who wants to profit by imitating or hijacking traditional knowledge (traditional knowledge) in this case traditional food becoming local wisdom or the public domain of the community.

4. CONCLUSION

Traditional food management as EBT has actually been protected by Law No. 28 of 2014 concerning Copyright, but the legal vacuum still occurs because traditional food is not yet regulated as part of EBT. Protection is given only if the traditional food is registered as a geographical indication. Several laws and regulations have provided protection regarding traditional food, but cases of claims against traditional food still exist. The absence of arrangements related to traditional food as EBT causes foreign parties or other countries to easily recognize the tradition, so it is necessary to regulate traditional food as EBT.

REFERENCES

- Andi Bau Inggit AR, A Pangerang Moenta, Marwati Riza, Hamzah Halim. (2017). Local Regulation Review in Realizes Legal Order of the Local Governance. *Journal of Law, Policy and Globalization*. Vol. 59: 214-219
- Asri, D. P. B. (2018), *Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta*, *Journal of Intellectual Property*, 1(1)
- Atsar, A. (2017). *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(2).
- Ayu, M.R. (2006). *Memperbincangkan Hak Kekayaan Intelektual Indikasi Geografis*, Bandung : PT. Alumni.
- Bachtiar, F. (2011). *Perlindungan Hukum Ekspresi Budaya Tradisional (Folklore) Dalam Rangka Pemanfaatan Potensi Ekonomi Masyarakat Adat Jepara*. Tesis. Universitas Indonesia.

- Badan Penelitian dan Pengembangan HAM Kemenkumham. (2013). *Perlindungan Kekayaan Intelektual atas Pengetahuan Tradisional dan Ekspresi Budaya Tradisional Masyarakat Adat*. Bandung : Alumnus.
- Dewi, T. K. S. (2011). Kearifan Lokal Makanan Tradisional: Rekonstruksi Naskah Jawa dan Fungsinya dalam Masyarakat. *Manuskripta*, 1(1).
- Dharmawan, N. K. S. (2017). Protecting Traditional Balinese Weaving Trough Copyright Law: Is it Appropriate?. *Diponogoro Law Review*, 2(1).72.
- Dharmawan, N. K. S. (2018). *Harmonisasi hukum kekayaan intelektual Indonesia*. Tabanan : Swasta Nulus.
- Emy Handayani. (2019). Social Change of Traditional Communities in the Direction of Modernization in the Anthropological Approach to Law. *Musamus Law Review*, 1(2), 95-104. <https://doi.org/10.35724/mularev.v1i2.1197>
- Firmansyah, M. (2008). *Tata Cara Mengurus HaKI*. Jakarta: Visimedia.
- Hozumi, T. (2006). *Asian Copyright Handbook : Buku Panduan Hak Cipta Asia Versi Indonesia*. Jakarta : Ikatan Penerbit Indonesia.
- <https://jabar.kemenkumham.go.id/berita-kanwil/berita-utama/perlindungan-ekspresi-budaya-tradisional-di-jawa-barat>. (Diakses Pada 11 Juni 2019).
- <https://kbbi.web.id/tradisional>. (Diakses Pada 7 Juni 2019).
- <https://nasional.tempo.co/read/411854/malaysia-juga-klaim-rendang-dan-cendol/full&view=ok>. (Diakses Pada 7 Juni 2019).
- <https://www.kompasiana.com/fridawahyumi/5b1263ebcaf7db64006cf1c3/moeldoko-kesenian-dan-kebudayaan-adalah-aset-negara-untuk-kemajuan-bangsa>. (Diakses Pada 7 April 2019).
- <https://www.kompasiana.com/nawawimnoer/5b94a150677ffb5ea968f392/heboh-tempe-tahukah-anda-hak-paten-tempe-bukan-milik-indonesia>. (Diakses Pada 7 Juni 2019).
- <https://www.liputan6.com/citizen6/read/2156339/8-warisan-budaya-indonesia-yang-pernah-diklaim-malaysia>. (Diakses Pada 7 Mei 2019).
- <https://www.ugm.ac.id/id/berita/671-perlindungan-pengetahuan-tradisional-di-indonesia-perlu-aturan-tegas>. (Diakses pada 3 Juli 2019).
- Julianto Jover Jotam Kalalo. (2018). Politik Hukum Perlindungan Hak Ulayat Masyarakat Hukum Adat di Daerah Perbatasan. Makassar: Disertasi Universitas Hasanuddin.
- Julianto Jover Jotam Kalalo, Chyntia Novita Kalalo. (2018). Legal Protection Against Health Workers in Taking First Aid Medical Measures. *Musamus Law Review*, 1(1), 40-52. <https://doi.org/10.35724/mularev.v1i1.1076>
- Koentjoroningrat. (2009). *Pengantar Ilmu Antropologi*. Jakarta : Rineka Cipta.
- Paramiswari, A., & Purwani, S. (2019). Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta. *Kertha Semaya : Journal Ilmu Hukum*, 7(1). Doi: 10.24843/KM. 2018.v07.i01.p04
- Puspitasari, W. (2014). Perlindungan hukum terhadap pengetahuan tradisional dengan sistem perizinan: perspektif negara kesejahteraan. *Padjadjaran Journal of Law*, 1(1).
- Riswandi, B.A. dan Arif Lutviansori, *Mempersoalkan Perlindungan Traditional Knowledge*, <http://hukumonline.com/detail.asp?id=20725&cl=kolom>. (Diakses Pada 7 Juni 2019).
- Rongiyati, S. (2016). Hak Kekayaan Intelektual atas Pengetahuan Tradisional. Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan, 2(2).

- Saidin, OK. (2006). *Aspek Hukum Kekayaan Intelektual (Intellectual Property Right)*. Jakarta : PT. Raja Grafindo Persada.
- Soekanto, S. (2010). *Pengantar Penelitian Hukum*. Jakarta : UII Press.
- Sofyarto, K. (2018). Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi. *Kanun: Jurnal Ilmu Hukum*, 20(1).
- Sukihana, I. A., & Kurniawan, I. G. A. (2018). Karya Cipta Ekspresi Budaya Tradisional: Studi Empiris Perlindungan Tari Tradisional Bali di Kabupaten Bangli. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 7(1).
- Supariyani, N. (2016). Perlindungan Hak Kekayaan Intelektual Terhadap Tas Bermerek Yang Diimport Ke Indonesia. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 5(2).
- Westra, L. (2012). *Environmental justice and the rights of indigenous peoples: International and domestic legal perspectives*. Routledge.
- Yessiningrum, W. R. (2015). Perlindungan Hukum Indikasi Geografis sebagai Bagian dari Hak Kekayaan Intelektual. *Jurnal IUS Kajian Hukum dan Keadilan*, 3(1).