

Analysis of the Legal Challenges of Enacting Effective Communal Intellectual Property Data Collection System in Indonesia

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Abstract

This article discusses challenges arising from the implementation of the communal intellectual property registration system based on Regulation No. 13 of 2017 by the Minister of Law and Human Rights on Communal Intellectual Property Data. The urgency to conduct this research lies on the fact that Indonesian is rich in cultural heritage that acts as a basis for communal intellectual property but there are limitations in the existing communal intellectual property protection system. The purpose of this research aims to identify obstacles and challenges faced by relevant stakeholders in complying with the regulation. Research methods include normative legal research through secondary data that includes regulations, official documents, book reports and journals. The results reveal discrepancies between existing registration practices and the requirements stipulated in the regulation. Identified issues include negligence in data collection, a lack of understanding of the regulation, and resource limitations. The implications of these issues create barriers to the effectiveness of Communal Intellectual Property registration system. The article explores alternative solutions to enhance the performance of the registration system, including improvements in implementation guidelines, capacity-building for industry players, and strengthening collaboration among communal intellectual property stakeholders

Keywords: Administrative System, Communal Intellectual Property; Data Collection.

Introduction

Communal Intellectual Property (hereinafter referred to as Communal IP), involving copyrights, patents, and trademarks is a strategic asset in driving innovation and competitiveness within a community (Sofyarto, 2018). In Indonesia, a significant step in regulating and protecting communal intellectual property was taken with the issuance of Minister of Law and Human Rights Regulation Number No. 13 of 2017 concerning Communal Intellectual Property Data ("Permenkumham Communal Intellectual Property KIK"). This regulation is designed to provide a strong legal foundation, requiring regular registration and data collection to ensure robust protection of Intellectual Property rights (Herzani, 2021).

Later, Indonesian government had also issued the Government Regulations No 56 Year 2022 on Communal Intellectual Property Rights ("Government Regulation Communal Intellectual Property KIK") that includes substance that mirrors

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Permenkumham Communal Intellectual Property KIK. This measure is done in order to provide more legal protection to KIK. Both regulation signifies a progressive step, as these might be seen Indonesia's commitment to protect Communal IP. Nevertheless, its implementation has not always been seamless, leading to several issues in the communal IP data system. This creates a crucial legal system question such as the ability of the current data system of meeting the complexities of communal IP, the extent of stakeholders involvement within the data collection process as well as the challenges that they face. Further, it also asked whether there are any potential risks associated with the failure of the data system for such valuable communal intellectual assets.

The communal IP data system regulated by this legislation presents a realm with several issues that require in-depth understanding. Critical questions emerge regarding the readiness and capability of the data system to manage the diversity and complexity of communal IP. Based on a *prima facie* analysis, there's a number of issues in their legal, administrative and practical aspects. In the legal aspect, there exists a gap between on-field data collection practices and the requirements stipulated in the regulation. This can result in discrepancies between recorded data and the actual situation, reducing the accuracy and effectiveness of the system. Additionally, there are clauses in the ministerial regulation that appear ambiguous.

Further on the administrative front, issues related to irregular and unsystematic data collection can lead to incomplete information. Negligence in this regard can reduce the effectiveness of communal IP and will further reduce the amount of protection and hinder innovation development. Moreover, deficiencies in the complex data collection process can be a barrier for owners of communal IP rights, especially for small and medium-sized enterprises, limiting their access to legal protection. Addressing these challenges is essential to ensure the effectiveness and sustainability of the communal IP protection system in Indonesia. Finding solutions will contribute to fostering innovation and promoting a conducive environment for communal growth, with equitable access to legal frameworks for all community members (Putri, 2021).

In the practical aspect, limited coordination and collaboration among relevant agencies, such as the government, legal institutions, and industry players, can jeopardize the sustainability of the data system (Kasih, Dharmawan, Putra, Sudiarawan, & Rakhima, 2021). Weak collaboration may impede the exchange of information and coordination in addressing intellectual property violations. Additionally, limited resources, both in terms of finances and human resources, can be a barrier to conducting comprehensive data collection (Siagian, 2021). This can affect the speed, accuracy, and coverage of the recorded data.

In examining the Permenkumham Communal Intellectual Property KIK, it is crucial to conduct a comprehensive study on potential issues within the data collection process and recording methods. The absence of a robust system for collecting and registering communal intellectual property may pose significant challenges. Firstly, the community's ability to identify and document its intellectual property assets

comprehensively could be hindered, leaving certain assets vulnerable to exploitation (Herzani, 2021).

Secondly, without proper registration procedures, communal IP may lack legal recognition, diminishing the community's ability to enforce its rights effectively. Thirdly, inadequate data collection may impede monitoring and enforcement efforts, making it difficult to detect and address instances of infringement. A thorough examination of the implementation of the Permenkumham Communal Intellectual Property KIK system is essential to address these potential issues and enhance the overall effectiveness of intellectual property protection within the community.

Research Method

In the context of this research, the researcher employs a normative juridical legal research method with a focus on the study and analysis related to traditional knowledge. The approach utilized involves a statutory approach, emphasizing legal provisions. The research utilizes a literature review method to access secondary data through literature sources such as books, journals, research findings, articles, and relevant legislative regulations associated with the research object.

This research adopts a descriptive analytical approach, aiming to depict the implication of the law related to the enforcement and data collection of communal IP in their implementation phase. The analysis in this research is focused on the importance of legal enforcement and protection of communal IP with the goal of obtaining a profound understanding. Additionally, the research aims to identify the best practices of regulations that can be applied to protect communal IP. The research approach is conducted through a literature review.

The current study builds upon previous research conducted by Sulistianingsih D, Adhi Y.P & Pujiono (2021), particularly focusing on the digitization of communal intellectual property (IP) data in Indonesia. While acknowledging the significance of digitization in preserving communal IP rights in the digital realm, this study takes a more comprehensive perspective, addressing broader issues within the communal IP data system. Unlike the earlier study, the present research emphasizes concerns related to vague clause arrangements, an unclear dispute settlement system, and the absence of an effective administrative collection system.

Additionally, Ayu (2022) exploration of legal protection for communal IP based on human rights serves as another reference. However, the current study adopts a legal positivist approach, highlighting the urgency of protection based on existing regulations, specifically the Minister of Law and Human Rights Regulation Number 13 of 2017 concerning Communal IP Data. In this study, the analysis will be limited to the legal issues contained in the Minister of Law and Human Rights Regulation Number 13 of 2017 concerning Communal Intellectual Property Data. The research will not include empirical research results related to the data collection of communal intellectual property systems. This is done to narrow the focus of the analysis to the legal clauses contained

within the clause of the Minister of Law and Human Rights Regulation Number 13 of 2017 concerning Communal Intellectual Property Data.

Result and Discussion

The Protection of Communal Intellectual Property Through Minister of Law and Human Rights Regulation No. 13 of 2017 on Concerning Communal Intellectual Property Data

In 2017, the Minister of Law and Human Rights of the Republic of Indonesia issued Minister of Law and Human Rights Regulation No. 13 of 2017 concerning Communal Intellectual Property Data Permenkumham Communal Intellectual Property KIK. This regulation is designed to provide a stronger legal foundation regarding the registration and protection of communal intellectual property in Indonesia. For communal IP objects that fall into traditional expression of culture criteria, This regulation is one of the derivative regulations and administrative measure taken as part of the protection contained within Law No 5 Year 2017 on Cultural Advancements (“Cultural Advancement Law”) where the process of data collections was seen as a means to advance Indonesia's Culture in the long run (Susanti, 2022).

Other than this, the development also includes Indonesia’s Government Regulations Communal Intellectual Property KIK where the legal basis to collect the data. Permenkumham Communal Intellectual Property KIK and Government Regulations Communal Intellectual Property provides a clear definition of communal IP, encompassing copyrights, patents, trademarks, trade secrets, and other types of intellectual property collectively owned by a community. The regulation mandates the obligation to register communal IP (Wulandari, Suparman, Palar, & Amirulloh, 2023). Owners of rights are required to register and record their communal IP in the designated system.

The regulation introduce the establishment of a database that includes information related to communal IP. This database serves as the primary tool to track, monitor, and manage communal IP. The regulation governs the mechanisms for the utilization and distribution of benefits from communal IP. The aim is to provide clear guidance regarding the rights and obligations of stakeholders. In the context of Permenkumham Communal Intellectual Property KIK, the following are the types of traditional Communal IP as protected by the regulation.

Table 1. Types of Communal Intellectual Property recognizable in Indonesia in accordance with Permenkumham Communal Intellectual Property KIK

<p>Traditional Knowledge (Art. 3 of Permenkumham Communal Intellectual Property KIK) consists of:</p> <ul style="list-style-type: none"> a. Technical skills (know-how); b. Skills; c. Innovation; d. Concepts; e. Learning; f. Agricultural knowledge; 	<p>Traditional Cultural Expressions (Art. 4 of Permenkumham Communal Intellectual Property KIK) as referred to include forms of expression:</p> <ul style="list-style-type: none"> a. Verbal textual; b. Music; c. Movement; d. Theater;
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<ul style="list-style-type: none">g. Technical knowledge;h. Ecological knowledge;i. Medical knowledge, including related medicines and healing practices, as well as knowledge related to Genetic Resources;j. Community customs;k. Rituals (magical);l. Celebrations;m. Traditional economic systems;n. Social organizational systems;o. Knowledge and behavioral habits regarding nature and the universe, traditional medicine, and/or skills in crafting traditional items, traditional foods/drinks, traditional modes of transportation.	<ul style="list-style-type: none">e. Visual arts;f. Traditional ceremonies;g. Architecture;h. Landscape; and/ori. Other forms of expression in accordance with development
Genetic Resources (Art. 5 of Permenkumham Communal Intellectual Property KIK) as referred to include: <ul style="list-style-type: none">a. Plants or plant parts that have actual or potential value;b. Animals or animal parts that have actual or potential value; and/orc. Microorganisms or their parts that have actual or potential value.	Potential Geographical Indication (Art. 6 of Permenkumham Communal Intellectual Property KIK) as referred to includes goods and/or products in the form of: <ul style="list-style-type: none">a. Natural resources;b. Handicrafts; and/orc. Industrial products.

Source: Research by the Writer, 2023

This regulation pertains to the protection measure afforded to each types of Communal IP owned by specific communities. It reflects a response to the importance of safeguarding the intellectual heritage collectively held by a group. Permenkumham Communal Intellectual Property KIK establishes sanctions and legal enforcement mechanisms for violations of the provisions outlined within. The objective is to enhance compliance with the regulation.

Issues in Minister of Law and Human Rights Regulation No. 13 of 2017 concerning Communal Intellectual Property Data

Microorganisms as Non-Patent Subjects and Subjects of Communal Intellectual Property

Microorganisms, such as microorganisms or other small organisms, may not receive adequate patent protection due to the difficulty in proving the innovation contained within these small entities. Nevertheless, microorganisms become one form of genetic resources as mentioned in the Permenkumham Communal Intellectual Property KIK. In the latest development contained within the Government Regulations of Communal Intellectual Property, Micro – Organisms persists as the type of Genetic Resources eligible for Communal Intellectual Property protection.

On the other hand, Indigenous Communities in Indonesia have a rich history of utilizing microorganisms for various purposes, drawing on traditional knowledge passed down through generations. Indigenous communities often use microorganisms in the fermentation process to produce traditional foods (Palar et al., 2021). This includes the use of specific bacteria and yeast strains to ferment ingredients like rice, soybeans,

cassava, and coconut, resulting in products such as tempeh, tofu, tape (fermented cassava), and various types of traditional alcoholic beverages (Fuad, 2004).

Microorganisms are employed in traditional medicinal practices by indigenous communities. Fermented products, such as herbal concoctions or plant extracts fermented with specific microorganisms, are believed to have therapeutic properties. These traditional remedies are often used for various health conditions. Further, indigenous agricultural communities use microorganisms to enhance soil fertility and promote plant growth. Beneficial microorganisms, including certain bacteria and fungi, may be applied to seeds or soil to improve nutrient availability and protect crops from diseases. Lastly, some indigenous communities use microorganisms in natural fiber processing (Putri, Putri, & Tisnanta, 2021). Microbial retting, a process involving the use of bacteria and fungi, is employed to break down the pectin in plant fibers, facilitating the extraction of fibers for traditional crafts and textiles (Hasan et al., 2020).

However, to date, microorganisms remain one of the things that cannot be patented in Indonesia. In Indonesia, Law Number 13 of 2016 concerning Patents regulates patent protection, and the provisions in this law establish several exceptions or exclusions in terms of patent protection. One aspect to note is that, in some cases, patents are not granted for microorganisms. Although the law does not explicitly mention "microorganisms," certain criteria can determine whether an innovation falls into the category that is not eligible for patent protection (Hidayat, 2018).

In accordance with the logic of the Patent Law, microorganisms that do not meet the general patent requirements, such as the inability to demonstrate a sufficient level of innovation, may be excluded from patent protection. Patent requirements involve novelty, non-obviousness, and the ability to be industrially applicable. Some innovations involving specific biological processes or varieties of plants and animals may receive patent protection, but there are certain limitations on the types of microorganisms that can be recognized as patentable discoveries. Patent protection may be excluded for innovations deemed to involve certain ethical or moral aspects. This may include innovations considered unethical or immoral in a specific context.

Innovations that may have implications for national security or can be used for purposes that could harm the general public or the country may be excluded from patent protection. It is important to note that these exclusions are designed to maintain a balance between providing incentives for innovation and protecting public, ethical, and national security interests. Therefore, in evaluating patent protection in Indonesia, it is crucial to understand the context and criteria applied to determine whether a microorganism can receive patent protection or not. This is also done to ensure legal certainty in the Communal IP Data inventory process, making the protection of intellectual property for genetic resource microorganisms clear.

The Inventory Process of Communal Intellectual Property without Clear Administrative Procedures

In Permenkumham Communal IP, the inventory process as mentioned in paragraph (1) can be conducted through field/feasibility studies, completeness of

administration, proposing the designation of inventory results, and/or data exchange. However, this procedure is not complemented by clear derivative regulations or mechanisms. Concerning this matter, there is no explanation regarding the intended field study mechanism, the checklist of required administration, or the types of designation and data exchange meant.

Through these studies, there's already an annex book of Permenkumham Communal Intellectual Property KIK, however the annex book does not cover all of the data exchange mechanism as contained within the regulations. The annex only covers the mechanism conducted to fill out the forms to register communal IP rights through physical attendance of the custodian to the local Ministry of Law and & Human Rights Office. By that, the annex does not cover the issue where the custodian domiciled in the remote area and cannot be physically present in the local Ministry of Law & Human Rights Office. For this kind of case, both the Minister's regulations and its annex does not regulate the arrangement in special circumstances.

Other than this, we have also seen development coming from the Government Regulations on Communal Intellectual Property. In this regulations, the inventory process is being divided into two process that includes recordal process and administrative process. However, the problem that was contained within Permenkumham Communal IP still persists. In the recordal process part, this regulations consists of mechanism on where the process to record the Communal IP Assets is in accordance the regulations by either the Minister, the representative of the executives and/or the local government. Both the recordal process as well as the decision making process is still conducted in a request and analysis process.

Further, they have laid out the administrative requirements, however they still require other documents that are prescribed by the laws without a clear indications on which documents that are meant by this. Legal regulations without adequate administrative mechanisms can lead to several potentially adverse consequences. The lack of administrative mechanisms can result in uncertainty in the implementation and interpretation of the law. Involved parties may struggle to understand how the rules should be applied or how they can comply with the law properly.

Without clear administrative mechanisms, the execution of legal rules can become challenging. Organizations or individuals responsible for enforcing the rules may face difficulties in establishing the necessary procedures and steps. In the long run, inadequate administrative mechanisms can lead to a lack of transparency in the decision-making process. This can result in a lack of accountability and diminish public trust in the legal system. The absence of clear administrative mechanisms can increase the potential for conflicts among involved parties. Without clear procedures to resolve disputes or disagreements, conflicts may be challenging to avoid or overcome.

Complaint Procedure in Communal Intellectual Property (KIK) without Clear Mechanisms and Substantial Reasoning Standards

Based on Article 16 of Permenkumham Communal Intellectual Property KIK, it is stated that every citizen could file a complaint to the minister in relation to the data

collection process due to a number of reasons. Firstly, the communal IP rights in questions are not aligned with the local tradition and wisdom of the local communities. Secondly, the custodians that are listed on the registry are not the real custodian for the communal intellectual property in question. In relation to both aspects, analysis needs to be done in order to seek the potential legal issues arising from clauses to implementations in the real world.

Alignment with Local Traditions Aspect

In Permenkumham Communal Intellectual Property KIK, it has been explained that the process of dissent in the Communal IP mechanism can raise objections to the Minister against Communal IP listed in the Central Data, in case the Communal IP does not align with the prevailing social norms in the communal society. This phrase poses a danger where communal traditional wealth that may not conform to the local culture can lose its protection. Further, the latest development contained within the Government Regulations on Communal IP also did not solve the problem, where the laws only ruled about the possibility of communal IP registration that could undergo IP registration process in a situations where they are being rejected.

Also, the dispute mechanism procedure are not yet regulated in this regulation. An example is the Bissu culture in South Sulawesi. Bissu is a unique social and spiritual entity in Bugis culture in South Sulawesi, Indonesia. They are recognized as individuals with gender characteristics not confined by male or female limitations. The Bissu culture has become an integral part of Bugis society, involving significant spiritual, religious, and cultural roles. In accordance to the KIK National Data, Bissu is currently recorded as communal intellectual property with Traditional Knowledge form with Bissu Arajang Segeri as the recorded custodian and Drs. Harun Sulianto, Bc.IP., S.H as the listing party.

The fact that Bissu cannot be clearly identified as male or female, accepted as a third-gender entity unrestricted by the binary concept of male and female, might face rejection from a society accustomed to only two gender concepts. Although Bissu is widely recognized and respected in Bugis society in South Sulawesi, there are some conflicts or tensions related to their existence. Some factors causing these conflicts involve cultural, religious, and societal disagreements. Conflicts related to Bissu may arise from a religious perspective (Lathief, 2004).

Despite having a spiritual role and often engaging in traditional religious practices, these views may not align with the dominant Islamic views in South Sulawesi. Therefore, customs and religious practices involving Bissu can become a source of conflict. Conflicts related to Bissu may also stem from disagreements within the community. Some members may consider the roles and practices of Bissu less relevant or even controversial. On the other hand, others may uphold the continuity and importance of the tradition. This can pose a challenge in the future to the dissent mechanism within Permenkumham Communal Intellectual Property KIK to reduce disagreements based on populist principles.

The above mentioned examples should be used as a consideration in order to register those types of communal IP that are not populist yet still hold a heritage value to

local communities, especially indigenous ones. There needs to be a strategic dialogue between government and local communities so that the phrase “not aligned with the social realities within the local communities” should not be infused with the populism aspect. In regards, there needs to be a special investigation procedure involving analysis from the sociological, historical and anthropological aspects of the communal IP in question.

Cultural Advancements Law has already regulated that during the process of conducting data collection for cultural advancement objects, the minister has to consult with experts in relation to the status of the object itself. However, what is missing from Permenkumham Communal Intellectual Property KIK was the appointment system of the experts in questions, as this expert’s objectivity and impartiality was needed in order to protect communal IP. The latest development which states that Communal IP that are rejected can be registered again did not solve the problem because it would mean that it would be ineffective for the local community via their custodian.

A proposed strategic method would include a negotiation and consultation process between the custodian of the communal IP, the parties that rejected the communal IP, the expert team, as well as representative from the executives. In this regard, the conflict between populist culture and the original communal IP of the community can be mediated with derivative regulations related to communal IP conflicts containing sensitive issues. With these derivative regulation mechanisms, it is hoped that the relevant ministry can be more objective in the registration process. Furthermore, the arrangement for expert appointment in terms of dispute with the locals in the situation needs to be included within Permenkumham Communal Intellectual Property KIK.

Custodianship Issues for the Communal Intellectual Property Rights

Permenkumham Communal Intellectual Property KIK is a regulation that governs the registration and protection of communal IP in Indonesia. However, in general, the issue of custodianship or the control and management of communal IP in the context of such regulations may involve questions about who is responsible for managing and safeguarding such communal IP. Custodianship may refer to individuals or institutions responsible for the preservation, sustainability, and proper use of communal intellectual property.

The latest development in relations to the Custodianship issue contained within the Government Regulations on Communal IP that does not recognize the concept of Custodian. In this law, the definition only includes local community where it is being defined as indigenous communities and/or local community where the communal intellectual property is located. Nevertheless, the concept of custodian are still applicable in this community, as not all members of the community are eligible to conduct registration of this assets.

This is related to the nature of communal traditional wealth owned by a specific segment of society, which is undoubtedly more than one. In its implementation, when there is ambiguity or issues related to custodianship, it can be a source of uncertainty and conflict. A clear understanding of the responsibilities and roles of custodians in the protection and utilization of communal intellectual property can be key to ensuring the

successful implementation of these regulations. Based on the definition contained within Permenkumham Communal Intellectual Property Intellectual Property KIK, the parties that are responsible to manage and develop the communal intellectual property rights need to be properly registered and held responsible for their responsibility of the said communal intellectual property rights.

For this reason, a special mechanism and/or regulations needs to be created between the custodian and the government in order to create an effective appointment system of custodianship for communal intellectual property rights. In this regard, the government needs to be sure that the appointed custodian is truly the representative of the local community bearing the communal intellectual property in question. The latest development in relations to the custodianship issue includes the Government Regulations on Communal IP Effectiveness in the custodian appointment process can also help the relevant ministry act as a mediator in custodianship-related conflicts. If there is a clear and measurable mechanism for the custodian selection process, it will facilitate the mediation process as outlined in the Permenkumham Communal Intellectual Property KIK.

Conclusion

The research emphasizes the importance of aligning legal mechanisms with populist cultural values for a fair and sustainable balance. Managing custodial conflicts was identified as critical in maintaining the integrity of shared cultural heritage, urging inclusive dialogue and stakeholder participation. The holistic protection of communal intellectual property involves interrelated legal, cultural, social, and economic dimensions, shaping a purposeful and inclusive future for Indonesia's cultural diversity. As a contribution to ongoing corrective measures, this study anticipates stimulating further discussion and pioneering innovative solutions aligned with Minister of Law and Human Rights Regulation No. 13 of 2017.

Future research efforts may explore the practical implementation of harmonization measures, assess the long-term impact of custodial conflict resolution strategies, and investigate the evolving relationship between communal intellectual property and contemporary cultural dynamics in Indonesia. In addition, recommendations include ongoing collaboration between policymakers, stakeholders, and communities to improve communal intellectual property recording systems, ensuring their adaptability and effectiveness over time.

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