


## Implementation of Traditional Knowledge Protection of Enbal Processing

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### Abstract

**Introduction:** Implementation and regulations governing the protection of traditional knowledge is still considered less effective. The law is expected to be able to overcome various problems that arise related to the protection of traditional knowledge from the community, especially the Kei Islands community on enbal processing knowledge.

**Purposes of the Research:** The purpose of this study was to determine and analyze the implementation of the protection provided by the copyright law on the ownership of a traditional knowledge which in this case is the processing of enbal traditionally done as a staple food in the Kei Islands community.

**Methods of the Research:** The research method used is juridical empirical.

**Results of the Research:** The results obtained are the implementation of the protection provided by the copyright law on the ownership of a traditional knowledge which in this case is the processing of enbal traditionally done as a staple food in the Kei Islands community has actually been regulated in Article 38 of the Copyright Act. However, this protection can be provided if the community continues to maintain traditional processing without the help of modern tools when processing enbal into staple foods.

**Keywords:** Legal Protection; Traditional Knowledge; Copyright Act.

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## INTRODUCTION

The law must be able to provide protection for intellectual work so that it can encourage people to develop their creative power in the fields of science, technology, art, and literature. The traditional knowledge of the Kei Islands people to process poisonous cassava into enbal as a staple food deserves to be protected.

However, the implementation and regulations governing the protection of traditional knowledge are still considered less effective. So it needs efforts from various parties to cooperate in the protection of traditional knowledge on enbal processing optimally and purposefully. The law is expected to be able to overcome various problems that arise related to the protection of traditional knowledge from the community, especially the Kei Islands community on enbal processing knowledge.

Research on traditional knowledge has been studied by Erika Arika Persada, Faculty of Law, Islamic University Ogan Komering Ilir, in the Journal of legal certainty and Justice Vol 44 Number 1 June 2022, in her research Erisa Arika Prasada argues that this or

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misappropriation harms the community as owners of traditional knowledge. The importance of patent protection of traditional knowledge that belongs to the community that is passed down from generation to generation because of the potential economic benefits resulting from the utilization of traditional knowledge by developed countries. This can result in the loss of the right of the community to exploit and commercialize freely for their own benefit because the patent of traditional knowledge has been owned by developed countries with a first to file principles registration system which means that developed countries as the First party to register, it can be ascertained will receive legal protection compared to people who have had traditional knowledge for generations.<sup>1</sup> What distinguishes this study from the research that the authors do is the authors review the recognition of the state on Indigenous peoples as the rightful owners of a traditional knowledge, while previous researchers focused research on patent protection related to traditional knowledge.

Raden Muhammad Arvy Ilyasa in his research argues that with the potential for extraordinary biological wealth in Indonesia, it is also a fertile field for biopiracy crimes.<sup>2</sup> While Euis Sunaryo in his research which also discusses the traditional protection but the object of his research is batik Yogyakarta and Solo.<sup>3</sup> Research conducted previously focused on obtaining protection of a traditional knowledge through patents, while researchers seek to seek legal protection on a traditional knowledge through recognition of ownership which of course does not have a period of protection as in patent protection whose protection period is limited by time.

The purpose of this study was to determine and analyze the implementation of the protection provided by the copyright law on the ownership of a traditional knowledge which in this case is the processing of enbal traditionally done as a staple food in the Kei Islands community.

## METHODS OF THE RESEARCH

This study was conducted using empirical juridical approach that is Descriptive Study of qualitative analysis. The research seeks to describe the implementation of copyright act in protecting traditional communal knowledge in the Kei Islands community over the processing of enbal. This research is sourced from primary data (primary data) and secondary data (secondary Data) and from research literature and documents. In this study the primary data is data obtained from the research location through in-depth interview techniques using interview guidelines whose results are recorded in field notes. While the secondary data in the form of literature, documents belonging to village. The Data that has been obtained is verified for validity. then it is qualified and systematized in accordance with the problems and the framework of the report that has been prepared previously. furthermore, the data will be analyzed qualitatively with interpretations of the data so that conclusions can be drawn. then the overall data will be presented in an analytical descriptive manner.

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<sup>1</sup> Erisa Ardika Prasada, "Perlindungan Hukum Terhadap Pengetahuan Tradisional Di Indonesia," *Jurnal Kepastian Hukum Dan Keadilan* 4, no. 1 (2022): 45-54, <https://doi.org/10.32502/khk.v4i1.4488>.

<sup>2</sup> Raden Muhammad Arvy Ilyasa, "Perlindungan Hukum Atas Pengetahuan Tradisional Indonesia Terhadap Praktek Biopiracy Dalam Rezim Hak Kekayaan Intelektual," *Gema Keadilan* 7, no. 3 (2020): 170-94, <https://doi.org/10.14710/gk.2020.9544>.

<sup>3</sup> Euis Sunaryo, "Perlindungan Hak Kekayaan Intelektual Terhadap Perbatikan (Tinjauan Terhadap Batik Yogyakarta Dan Solo)," *JIPRO: Journal of Intellectual Property* 12, no. 2 (2019): 1, <https://journal.uui.ac.id/JIPRO/article/view/12697a>.

## RESULTS AND DISCUSSION

Francis W. Rushing and Carole Ganz Brown explain their legal thinking that legal protection of intellectual property rights will encourage the size, quality and efficiency of an intellectual work for both the inventor/creator/designer.<sup>4</sup> Based on the ideas of Francis and Carole, it can be analogized that traditional knowledge, which is also categorized as part of intellectual property rights even though it is communal ownership, is different from the ownership of intellectual property rights generally in personal ownership. Therefore, the protection of traditional knowledge must also be done to maintain the quality of traditional knowledge that can be maintained.

As a right derived from human intellectual ability, intellectual property rights, according to Mieke Komar and Ahmad M. Ramli, need to get adequate legal protection, in the field of science, art, and literature, or inventors in the field of new technologies that contain inventive steps, is the success of humans in giving birth to innovative works. Thus, it is a legal consequence to provide a legal protection for inventors or creators and to those who do creativity by exerting all their intellectual abilities, should be given an exclusive right to be able to exploit these intellectual property rights in return for their hard work.<sup>5</sup>

Slowly traditional knowledge and traditional cultural expressions will disappear in line with the erosion of traditional culture with the progress of the Times and the marginalization of Indigenous Peoples. This is due to a lack of awareness about the importance of protecting intellectual property assets, as well as the lack of well-documented indigenous knowledge. On the other hand, traditional knowledge and traditional cultural expressions are a matter of legal protection.<sup>6</sup>

In addition, protecting traditional knowledge is very important because traditional knowledge is the identity of the owner community. When traditional knowledge is lost, the identity of the owner community is lost. Furthermore, there are several reasons to protect traditional knowledge. One of them is the conservation of traditional knowledge and culture. In addition, the protection of traditional knowledge is aimed at preventing unauthorized exploitation and for the maintenance of economic and moral rights for holders of traditional knowledge.<sup>7</sup>

Indonesia has made improvements to its copyright law based on several fundamental considerations. The first consideration is, Indonesia's own domestic interests, namely to promote the development of intellectual works derived from the diversity of Indonesian art and culture, so as to promote the welfare of both the creator and the nation and state. Second, external interests, namely related to the involvement of Indonesia which has ratified several international conventions, then changes must be made.

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<sup>4</sup> Francis W Rushing and Carole Ganz Brown, *Intellectual Property Rights in Science, Technology, and Economic Performance: International Comparisons* (New York: Routledge Taylor & Francis Group, 2018), p. 40.

<sup>5</sup> Muhammad Syaifuddin, *Hukum Perlindungan Rekayasa Genetika Relasi Moral, Hak Kekayaan Intelektual, Dan Perlindungan Varietas Tanaman Dan Paten Di Indonesia* (Malang: Setara Press, 2017), p. 145.

<sup>6</sup> Abdul Atsar, "Hukum Terhadap Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang Nomor 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Law Reform* 13, no. 2 (2017): 284–99, <https://doi.org/10.14710/lr.v13i2.16162>.

<sup>7</sup> Reh Bungana Beru Perangin-angin, Ramsul Nababan, and Parlaungan G Siahaan, "Perlindungan Pengetahuan Tradisional Sebagai Hak Konstitusional Di Indonesia," *Jurnal Konstitusi* 17, no. 1 (n.d.): 178–96, <https://doi.org/10.31078/jk1718>.

The diversity of art and culture owned by the Indonesian nation is a creation that is protected by Act Number 28 year 2014 concerning copyright. Works of prehistoric relics, history, and other national cultural objects that are the work of the Indonesian people's copyright is a traditional knowledge (traditional knowledge). The protection of traditional knowledge is a new legal issue that is developing both nationally and internationally. The protection of traditional knowledge has become a new legal problem because there is no domestic legal instrument that is able to provide optimal legal protection against traditional knowledge.

A knowledge can be categorized as traditional knowledge if it has various elements below, namely: 1) Traditional knowledge is the result of practical thinking based on teaching and experience from generation to generation; 2) Traditional knowledge is knowledge in rural areas; 3) Traditional knowledge cannot be separated from the community of holders, including health, spiritual, cultural, and language of the holder community. Traditional knowledge is born of a spirit of survival; 4) Traditional knowledge gives credibility to the Society of its holders.

Traditional knowledge is the result of the creation of an ancient society where the creator of the work is unknown and in the process of creating it requires a great sacrifice of time, energy, and mind. Because the creator is unknown, then the state has the right to hold and control the creation without a certain time limit. In this case, there is a need for legal protection against traditional knowledge.

There are several reasons for the development of interests to protect traditional knowledge such as considerations of justice; conservation; maintenance of traditional culture and practices; prevention of appropriation by parties who are not entitled to the components of traditional knowledge; and the development of the use and interests of traditional knowledge. The protection of traditional knowledge plays a positive role in providing support to these communities in carrying out their traditions and preserving their sources of livelihood.

Looking at the importance of legal protection of traditional knowledge for Indonesia, this clearly has strategic value. The strategic value can be seen in terms of culture, economy, and social. In terms of culture, it appears that with the protection of traditional knowledge, the preservation of national culture will be achieved. Currently the Indonesian nation is famous for its cultural diversity both in terms of art, medicine, and so forth. If identified how much the amount of traditional knowledge possessed by the Indonesian nation it is impossible to be sure of that amount. For example, Yogyakarta is famous for the art of batik, wayang, woven, dance, and others. Madura with madura dance, stories of his kingdom, and the science of Medicine.

In terms of social, obviously with the protection of traditional knowledge, the preservation of social values will also be maintained and maintained. Therefore, the government should no longer be indifferent to the traditional knowledge possessed by the people of Indonesia. Even the government will be encouraged to continue to identify the existence of traditional knowledge in Indonesia.

In terms of economics, it is obvious that by doing legal protection against traditional knowledge, the economic value that will be generated from traditional knowledge will have

added value in this case the country's foreign exchange can be increased. This is logical considering that so far the exploitation of traditional knowledge is only limited to conventional use, but has not been developed so that it becomes something very valuable.

Based on this strategic value, the Indonesian government should not be slow in addressing this issue. However, if we look at the legislation governing the issue of traditional knowledge, especially in the Intellectual Property Rights regime, less attention is paid, both at the normative level as it is known that the protection of traditional knowledge is only regulated in the provisions of the copyright law.

In the ASEAN region itself the problem of the protection of traditional knowledge is receiving very serious attention. In recent times, ASEAN countries have held a workshop recommending that after the approval of the World Trade Organization (WTO) in the field of Trade Related Intellectual Property Rights (TRIPS) there is no specific regulation governing the protection of traditional knowledge, so that a new method needs to be developed. For this strategy, the efforts made begin by doing so through national legislation, then ASEAN countries formulate the position of legal protection of traditional knowledge which is then used as a basis in fighting for legal protection of traditional knowledge at the international level.

The first attempt to protect the traditional knowledge of the international community was the Stockholm Diplomatic Conference year 1967, which, in one of its recommendations, established the need to protect Folklore through Copyright Law. This resulted in the regulation of Folklore and the revision of the 1971 Bern Convention, Article 15 Paragraph (4) of which this article provides for the protection of unpublished works by unknown creators, who are considered citizens of the contracting states of the Bern Convention, UNESCO and WIPO have undertaken various efforts for its regulation. At the initiative of these two international organizations, in 1976 the folklore arrangement was included in the Tunis Model Law on Copyright for Developing Countries. WIPO's 1982 Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other prejudicial acts.

In addition, in 1993 in Mataatua New Zealand, the first International Conference on Cultural Rights and Intellectual Property Rights of Indigenous Peoples was held. The conference successfully issued the Mataatua Declaration, which in essence states that: the right to protect traditional knowledge is part of the right of self-determination and regulates that: 1) Traditional societies should determine for themselves what constitutes their intellectual and cultural property; 2) Inadequate traditional wealth protection mechanisms; 3) A code of ethics should be developed and adhered to when observing and recording traditional and customary knowledge; 4) An institution should be established to preserve and monitor the commercialization of these works and knowledge, to make suggestions to Indigenous Peoples on how they can protect their cultural history and to negotiate with the government on legislation affecting traditional rights; 5) An additional system of cultural and intellectual property rights should be established; 6) Retroactive group ownership based on the origins of historical and contemporary works; 7) Protection against harassment of important cultural objects; 8) A framework that emphasizes cooperation rather than competition; and 9) The most entitled Are The Descendants of the maintainers of traditional knowledge.

With the declaration of Mataatua is actually a boost to the growth of an awareness of the importance of the protection of traditional knowledge. In Indonesia, the regulation on the legal protection of traditional knowledge is contained in Article 38 of the Copyright Act which determines that: (1) the copyright on traditional cultural expressions is held by the state: What is meant by traditional cultural expression under this article includes one or a combination of the following forms of expression: verbal textual; both oral and written; in the form of prose and poetry; in various themes and content of the content of the message; which can be literary works or informative narratives; (2) The State shall take inventory, preserve and maintain traditional cultural expressions as meant in Paragraph (1); (3) the use of traditional cultural expressions as meant in Paragraph (1) must pay attention to the values that live in the community of its bearer.

What is meant by the values that live in the community of its bearer are customs, norms of customary law, norms of habit, social norms, and other noble norms that are upheld by the people of origin, who maintain, develop, and preserve these traditional cultural expressions. Associated with the processing of enbal carried out by the Kei Islands community, the legal protection provided for in the Copyright Act and the protection provided for in international conventions is the processing of enbal from toxic cassava into staple foods that can be consumed daily which is traditionally done, ranging from peeling cassava, washing it, grating cassava with a grater commonly used in, drying cassava by drying it not by roasting using the oven (although the oven tangkring), and process it into enbal ready to eat. This whole process must be done purely using human and natural energy, not using the help of modern tools, then it can be categorized as traditional knowledge that is entitled to protection under copyright law.

## CONCLUSION

The implementation of protection provided by the copyright law on the ownership of a traditional knowledge which in this case is the processing of enbal which is traditionally done as a staple food in the Kei Islands community has actually been regulated in Article 38 of the Copyright Law. However, this protection can be provided if the community continues to maintain traditional processing without the help of modern tools when processing enbal into staple foods.

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