

## **THE ROLE OF LOCAL GOVERNMENTS IN PROTECTING THE INTELLECTUAL PROPERTY RIGHTS OF THE BATAK TOBA COMMUNAL**

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### **ABSTRACT**

Intellectual Property Rights (IPR) are rights to property that arise and are born from human intellectual abilities. Whereas Communal Intellectual Property (KIK) is the result of copyrights, works, and cultural traditions that have been passed down from generation to generation by a group of people. Communal Intellectual Property includes Traditional Knowledge (PT), Traditional Cultural Expressions (EBT), Genetic Resources (SDGs), and Geographical Indications (GI). The purpose of this study is to determine the legal protection efforts against the Communal Intellectual Property of the Toba Batak ethnicity and to determine the role of the Regional Government in protecting and guaranteeing the Communal Intellectual Property of the Toba Batak ethnicity. This type of thesis research uses normative legal research with a qualitative approach method, the research method used, namely Library Research, with data collection techniques using Secondary Data which is divided into Primary Legal Materials, Secondary Legal Materials and Tertiary Legal Materials. The efforts to protect the Toba Batak KIK are based on a statutory regulation, namely Law Number 28 of 2014 concerning Copyright and the efforts of the Regional Government to protect and develop the Toba Batak KIK by registering it with the Directorate General of Intellectual Property (DJKI). Suggestions from researchers are that Toba Batak KIK can be protected by establishing separate KIK laws and regulations, forming a KIK handling group in the midst of society and changing the concept of Toba Batak people's thinking about preserving and protecting Toba Batak ethnic KIK.

**Keywords:** Toba Batak Ethnicity, Protection of Intellectual Property Rights, Communal Intellectual Property Rights, the Role of Local Government

### **INTRODUCTION**

Intellectual Property Rights, hereinafter referred to as HKI, are rights to property that arise and are born from human intellectual abilities. These works are produced by humans with their intellectual works. In Law Number 28 of 2014 concerning Copyright, it is seen that the implementation of legal protection given by the state to creators (Jannah: 2018).

Intellectual Property Rights or Intellectual Property Rights is a right that arises or is born because of human intellectual abilities (Mahardhita and Sukro: 2018). The term Intellectual Property Rights is a general term in English which in Indonesia is translated into several terms. Definition of IPR According to OK. Saidin, "Intellectual Property Rights are material rights, rights to something that comes from the work of the brain and the work of ratios" (Saidin: 2010).

Intellectual Property Rights have a very vital role in supporting the increase in added value of the creative economy. IPR is divided into two parts, Intellectual Property that is individual (personal) and Communal Intellectual Property (hereinafter abbreviated as KIK). KIK is closely related to local culture and local wisdom (Coordinating Ministry for Maritime Affairs and Investment: 2021). KIK is an Intellectual Property whose ownership is group and is a traditional cultural heritage that needs to be preserved, considering that culture is the identity of a group or society (Jogjakarta Special Region Office, Ministry of Law and Human Rights of the Republic of Indonesia: 2021).

Cultural heritage is something that must be protected and preserved by a country, one of the cultural heritages that is widely known by the Indonesian people is the Tor-Tor dance. The Tor-Tor dance has an important function, meaning and role for the life of the Toba Batak ethnic community, various traditional ceremonies such as weddings, deaths, youth parties and other ritual ceremonies.

The main purpose of KIK is to protect the rights of indigenous peoples so that there is no use of KIK without permission and/or unfair profit sharing for the community. Therefore, the first thing that must be understood is the desire of the Toba Batak ethnic community to protect an Intellectual Property owned by indigenous peoples. If the community does not understand the importance of protecting the cultural wealth of the community, claims will often be made by irresponsible people.

As an area that has the diversity and potential of KIK ranging from Cultural Expression (EBT), Traditional Knowledge (PT), and Geographical Indications (GI), Indonesia seeks to protect itself from recognition (claims), robbery or piracy by other countries. Because it is the government's obligation to protect what the Indonesian people have. And in the 1945 Constitution which has mentioned protecting the entire Indonesian nation and the entire homeland of Indonesia and promoting public welfare.

Especially in the North Sumatra area which is an area that has quite a lot of traditional arts, ranging from the Tor-Tor dance, folk songs, ulos, traditional clothes and so on, all of which are Communal Intellectual Property of the Toba Batak ethnicity that must be protected.

## LITERATURE REVIEW

### 1. Definition of Toba Batak Ethnicity

Ethnicity, ethnicity or tribe is a group of people whose members identify themselves with each other, usually based on a descent that is considered the same. Ethnic identity is characterized by recognition from others of the characteristics of the group such as similarity in culture, language, religion, behavior, and biological characteristics (Hinako: 2021).

According to data from the Central Statistics Agency (BPS) there are 1331 ethnic categories in Indonesia (BPS: 2021). One of the forms and diversity of these tribes is the Toba Batak tribe (Nainggolan: 2012). Ethnic or Batak Toba tribe originating from North Sumatra and can be found in various archipelagos, because almost every tribe can be found in people's lives.

The Batak tribe is one of the tribes that still maintains its culture and adheres to traditions and customs. The word culture is a very familiar word in human life and is also owned by every tribe. According to Mudji Sutrisno, at first culture was close to the meaning of cultivation, namely raising livestock, produce, and religious ceremonies. From the 16th to the 19th centuries this term began to be widely applied to the development of individual human reason and personal behavior through learning (Sutrisno and Putranto: 2005).

Culture in the Batak tribe is related to "dalihan na tolu", namely the first descriptive definition sees culture as a comprehensive totality concerning the whole of social life as well as showing a number of domains (fields of study) that make up culture, both historical definitions tend to see culture as a heritage that is passed down from generation to generation. the next generation, the three normative definitions see culture as a rule or way of life that forms concrete patterns of behavior and action, the four genetic definitions see origins as culture can exist or survive (Sihombing: 2018).

## **2. Definition of Intellectual Property Rights Protection**

Intellectual Property Rights are rights derived from the results of human intellectual activities that have economic benefits. Those who get legal protection (exclusive rights) are their rights, while the incarnation of these rights are in the form of physical objects or tangible objects or material objects (Dharmawan, et.al: 2016). Intellectual Property Rights (IPRs) are rights granted by law to a creator or inventor for a work of human intellectual ability (Hidayah: 2020).

According to Muhammad Djumhana and R. Djubaedillah, it is concluded that IPR is a right that comes from creative activities, a capacity for human thinking which is expressed to the general public in various forms, which have benefits and are useful in supporting human life, as well as having economic value (Wiradirja and Munzil). : 2018). The regulations that have been issued by the government regarding the Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Communal Intellectual Property Data.

## **3. Definition of Communal Intellectual Property Rights**

Communal Intellectual Property is a word from a foreign language, namely communal. The term communal itself has something to do with community, namely a group of people who gather or live together (community).

According to the Indonesian Dictionary (KBBI), the meaning of the word communal is related to the commune. Another meaning of communal is the property of the people or the public. Communal has a meaning, communal is a homonym because it means that it has the same spelling and pronunciation but has a different meaning. Communal has meaning in an adjective or adjective class so that it can change a noun or pronoun, usually by explaining it or making it more specific (KBBI: 2020).

To clarify, communal is a group, or people from an area or place that have the same origins, for example a group of indigenous people born from the same ethnic group, such as the Javanese from Java, the Bugis from Sulawesi, the Batak people from North Sumatra and many others. more tribes in Indonesia.

## **4. Definition the Role of Local Government**

In the General Indonesian Dictionary, a role is something that become part or who holds the main leadership (Poerwadarminta: 1984).

The definition of "role" according to Soerjono Soekanto (Soekanto: 2002), namely the role is a dynamic aspect of position (status), if a person carries out his rights and obligations in accordance with, then he carries out a role.

Meanwhile, the definition of "Local Government" according to Law Number 23 of 2014 concerning Regional Government is the regional head as an element of the Regional Government administrator who leads the implementation of government affairs which are the authority of the autonomous region. Meanwhile, Regional Government is the administration of government affairs by the regional government and the Regional People's Representative Council according to the principle of autonomy and assistance duties with the principle of autonomy as wide as possible in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia (Government. Net: 2022).

So the definition of "Role of Regional Government" is someone who holds a position as a leader who has a role to carry out government affairs according to the principle of autonomy that has been regulated in the Regional Government Law.

## METHODS

### 1. Research Type

The type of research used by the researcher is normative legal research. According to Philipus M. Hadjon, normative legal research is "research aimed at finding and formulating legal arguments through analysis of the subject matter" (Hadjon and Djamiati: 2005).

Normative legal research is also known as library research or document study. It is called library research or document study because this research is mostly carried out on secondary data in libraries, such as books and official documents from the government (Suratman and Dillah: 2013).

### 2. Data Collection Method

The data collection method used is library research. According to M. Nazir in his book entitled "Research Methods" suggests that what is meant by "library studies is a technique of collecting data by conducting a review study of books, literatures, notes, and reports that have to do with the problem. solved". Literature Study, namely conducting research by studying and reading literature that has to do with the problem that is the object of research (Raharja: 2021).

### 3. Data Type

The type of data used is secondary data. The Secondary Data is divided into:

- a. Primary Legal Materials consist of Law of the Republic of Indonesia Number 18 of 2002 concerning the National System of Research, Development, and Application of Science and Technology of Intellectual Property Rights and Law Number 28 of 2014 concerning Copyright.
- b. Secondary Legal Materials, consisting of related literature, scientific journals and the internet.
- c. Tertiary Legal Materials, consisting of Indonesian Language Dictionary.

## RESULTS AND DISCUSSION

### 1. Research Results

This study uses qualitative data analysis. Qualitative data analysis is a way of analyzing data sourced from legal materials based on concepts, theories, laws and regulations, doctrines, literature books, legal principles and opinions of experts as well as the views of the researchers themselves (Isahaq: 2017).

After the necessary data is collected, it can be concluded that the final conclusions regarding the main research problems in detail and clearly, especially those related to "The Role of Local Governments in Protecting the Intellectual Property Rights of the Toba Batak Ethnic Communal".

### 2. Discussion

Legal protection in Communal Intellectual Property requires the government's role to protect Indonesia's cultural and biological diversity, including strengthening ownership of KIK and preventing foreign parties from piracy or stealing Indonesian KIK. KIK includes Genetic Resources, Traditional Knowledge, Traditional Cultural Expressions, and Geographical Indications (Regional Office of the Ministry of Law and Human Rights: 2022).

The Toba Batak Ethnic Community must know the mechanism for taking an inventory of Communal Intellectual Property in maintaining and protecting any intellectual property owned. KIK inventory is an activity to carry out the management, regulation, recording and registration of inventory or property rights. The purpose of the KIK inventory is to protect the

rights of indigenous peoples from irresponsible people who try to take their ownership from their original owners.

According to Laina Sumarlina Sitohang, the KIK inventory aims to provide defensive protection. KIK as a wealth of Indonesian cultural heritage, and garnering active participation from local governments in updating data on cultural wealth in the regions (Regional Office of the Ministry of Law and Human Rights: 2022).

The Toba Batak Ethnic society must know the importance of registering Communal Intellectual Property, in addition to getting legal protection, also getting economic advantages and regional promotion and no less important is to preserve the cultural heritage that has been passed down from generation to generation which is a characteristic of the area.

It should be noted that registration is carried out at the Regional Office of the Ministry of Law and Human Rights through the IPR regime and the registration mechanism. The system adopted is a constitutive system, meaning that registration is the first condition of protection (Ridla: 2019).

One of the obstacles in obtaining Intellectual Property Rights is the ignorance of the inventors/craftsmen or creators of the recording or registration process to obtain rights at the Director General of Intellectual Property Rights. For this reason, the government must take the initiative to provide knowledge about registration or registration (Yusuf: 2018).

Communal Intellectual Property Rights are different from personal Intellectual Property Rights. Communal Intellectual Property Rights are rights owned by local communities or indigenous communities. Communal Property Rights can be protected directly in the concept of Traditional Knowledge Protection (PT) and Traditional Cultural Expressions (EBT) through State-owned and jointly owned Copyrights. Indirectly can be protected through the concept of protection of Geographical Indications and Genetic Resources.

It's just that Geographical Indications are slightly different because the rights are held by the direct community. Other Communal Rights are owned by the state which holds Copyrights for works of prehistoric, historical and cultural heritage of the people which are common property.

If you look at the National Data Center for Indonesian Communal Intellectual Property, there are Toba Batak ethnic intellectual property registered and registered with the Ministry of Law and Human Rights, such as Tor-Tor Haruan Bolon, Tor-Tor Dance, Tandok Dance, Rondang Bulan Dance, Sigalegale Dance, Song Butet, Sinanggartullo, Peanut Sihobuk, Saksang, Lappet, Mie Gomak, Arsik, Jabu Bolon, Jabu Parsikatan, and Andaliman Lumbanulu.

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Meanwhile, until now, there is still a lot of intellectual property from the Toba Batak community that is still not registered, such as the Toba Batak Gondang which is a drum bigger than the taganing which acts as a variable rhythm carrier (Wikipedia: 2022).

One of the advantages of the Toba Batak ethnic community in registering their intellectual works is increasing the added value of the creative economy to support strategies in the economic strengthening sector (Coordinating Ministry for Maritime Affairs and Investment: 2022). Economic rights are the rights to obtain economic benefits from intellectual property rights (Hapsari: 2012). It is said to be an economic right because IPR is an object that can be valued with money (Supramono: 2010).

The existence of KIK is a way for the government to protect cultural and biological diversity in Indonesia, including strengthening ownership and preventing piracy or theft from foreign parties. The only way to protect it is to register its intellectual property. The benefits obtained are the benefits of cultural diversity (Kompas.com: 2022).

KIK is also found in the Batak ethnicity, which is one of the largest ethnic groups in Indonesia, originating from the province of North Sumatra. The ethnic groups categorized as Batak are Angkola, Karo, Mandailing, Pakpak/Dairi, Simalungun, and Toba. The Batak are a group of tribes that inhabit most of North Sumatra. However, people often think that the mention of Batak is only for the Toba tribe, even though Batak is not only the Toba tribe (Wikipedia: 2022).

In the area of North Sumatra, the Toba Batak has a variety of Intellectual Property. Toba Batak is also a tribe whose society is generally Christian which has its own characteristics both in tradition, culture, customs, arts, and language. The Intellectual Property of the Toba Batak ethnicity consists of :

a. Dance Art

The Tor-Tor dance is a traditional dance originating from North Sumatra. Initially, the Tor-Tor dance was not only used by the Toba Batak ethnicity, but was also often used by other Batak tribes such as Simalungun, Pakpak Dairi, Mandailing, Karo, and Angkola. who have similarities and differences and have their own names in their respective cultures (Diana: 2017).

b. Traditional Musical Instruments

Consist of :

- 1) Hasapi;
- 2) Heseq;
- 3) Odap;
- 4) Sarune Bolon;
- 5) Gondang, dan
- 6) Ihutan

c. Traditional Clothes

At first Ulos or often also called Ulos cloth is a long cloth woven by Batak women. Ulos is also one of the typical Indonesian clothing. Which is hereditary developed by the Batak people, North Sumatra.

The types of Ulos and their use in the Toba Batak tribe, namely:

- 1) Ulos in marriage, namely Ulos Holong, Ulos Sedum;
- 2) Ulos in the death ceremony, namely Ulos Saput, Ulos Tujung, Ulos Ragihotang, Ulos Sampetua and Ulos Holong;
- 3) Ulos enters a new house, namely Ulos Sampetua Sedum and
- 4) Ulos seven months, namely Ulos Bintang Maratur, Ulos Mulagabe (Agustina: 2016).

d. Folk Songs

One of the Toba Batak folk songs is the Sinanggar Tullo song which is a folk song originating from Tapanuli, one of the popular songs that is often sung by the Toba Batak community and outside the Toba Batak tribe. The meaning of the song Sinanggar Tullo is the complaint of a virgin who has to obey his mother's orders, the

woman who gave birth to him wants his son to get a lover from the descendants of the Tobing clan and is also his partner (Sumut Tourism: 2022).

e. Spice

Andaliman or Batak pepper is a type of plant that is in great demand by the Batak people because of its distinctive taste and is usually used for traditional dishes, such as arsik, sangsang, naniura and chili anchovy (Sidauruk: 2022). Andaliman, known as Batak pepper, comes from the outer skin of several plant species belonging to the *Zanthoxylum Acanthopodium* DC genus or the citrus-jerukan tribe, Rutaceae (Sembiring: 2017).

f. Toba Batak Special Food

Typical Batak Toba food which is quite popular in the North Sumatra area, namely food derived from fresh fish found directly from Lake Toba, namely processed carp and there are still many dishes found in the Toba Batak community, namely Arsik, Naniura, Natinombur, Dali Nihorbo (buffalo milk).

The existence of a registration is evidence of ownership of Communal Intellectual Property Rights. The KIK registration function is important to prevent the misuse of intellectual property from irresponsible parties and reduce the risk of being exploited for economic purposes (Alrenamedia: 2022).

Regarding claims made by Malaysia, there have been protests from various circles of Indonesian society, both from the Batak ethnic community, because the Tor-Tor Dance belongs to all Batak residents in Indonesia (Tempo.com: 2022). Until the wider community joined the protest against cultural claims made by Malaysia, this also always led to a long dispute between Malaysia and Indonesia.

The claim made by the Malaysian state against the Tor-Tor Dance shows that there is a criticism of the lack of legal protection for the intellectual property works of the Batak ethnicity or the lack of knowledge and public attention to the development and preservation of the works and cultural traditions of the Batak community.

Intellectual work in North Sumatra, specifically the Toba Batak community, is an important aspect that has become the identity of the Batak community. In indigenous/local communities that produce intellectual works, they use more communal works.

These efforts aim to maintain a harmonious and harmonious life among community members who produce intellectual works, to prevent conflicts of ownership. Indigenous peoples only use the concept of communal life. The concept carried out by the community is not enough, the role of the Regional Government, especially in North Sumatra, is needed in the midst of the community.

Because the function of the Regional Government is to protect, protect and implement community welfare. Local government in Indonesia starts from the largest administrative region led by a governor. Then under it there are several administrative areas such as the City / Regency which is led by the Mayor / Regency and so on. The division of the territory cannot be original because it is regulated by law (Google: 2022).

Regional governments are authorized to manage their own government as a manifestation of the principle of regional autonomy by taking into account the principles of democracy, equity, justice which are basically directed at accelerating the realization of community welfare through improvement, service, empowerment and community participation as well as increasing regional competitiveness.

Presidential Regulation No. 44 of 2015 concerning the Ministry of Law and Human Rights regulates the position, duties and functions of the Ministry of Law and Human Rights, organizational structure and work procedures within the Ministry of Law and Human Rights. Based on Article 4 Chapter 2 concerning organizational structure, one of which is the Directorate General of Intellectual Property.

The vision of the Directorate General of Intellectual Property is to develop an Intellectual Property system that is effective and internationally competitive in supporting national development. Intellectual property system management is carried out by providing protection, appreciation and recognition for every creativity, promoting science-based technology and investment, stimulating the growth of innovative and inventive works and culture (Sari: 2016).

Until now, there are still Toba Batak ethnic intellectual property that is not registered with the DJKI (Directorate General of the Ministry of Intellectuals) of the Ministry of Law and Human Rights, plus the existence of piracy is proof that the Toba Batak people have not been able to protect the culture that has existed so far.

The obstacle faced by indigenous Batak people is that in general indigenous peoples do not recognize the individualistic system because of the birth of works for the benefit of indigenous groups in a communal system (Bustani: 2007). Indigenous people create works only because of spiritual needs because people are only used to pouring works in written form, so they don't think about registering.

Therefore, the need for the role of the government to maintain the local wisdom of the Batak Toba culture, the Regional Government has a great responsibility, not only to prepare financial assistance, but also to formulate the technical steps to be taken.

Protection from the Regional Government serves to prevent the work from being used by foreign parties. The act of violating the law by foreign parties is not only economically detrimental but can also damage traditional and sacred values.

Substantially, the legal form of the obstacle is that at this time there is no policy or regulation regarding the North Sumatra Regional Government regarding the Protection of Community Intellectual Works. Local governments need to create innovation and creativity in increasing funding sources, by exploring and empowering various existing regional potentials in order to encourage the realization of community welfare (Lukito: 2018).

In an effort to protect Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources and Geographical Indications, not only IPR legal instruments need to be harmonized with the conditions and characters surrounding NRE, PT, SDG, and GI. But it also includes contract law related to agreements in the use of NRE, PT, SDG, and GI so that the local community as the original owner of the Communal Intellectual Property gets an award and commensurate economic benefits.

And in order to improve the economy and maintain the culture of the Toba Batak people, it is very necessary to have an awareness from the community, especially young people. Therefore, it can be said that in order to fulfill the expectation of optimal protection of the communal rights of indigenous peoples, it is necessary to have the cooperation of various parties, in addition to the right legal instruments and the existence of effective legal instruments in carrying out the mandate of the law.

Article 4 of Law Number 5 of 2017 concerning the Promotion of Culture aims to :

- a. Develop the noble values of the nation's culture;



- b. Enriching cultural diversity;
- c. Strengthen national identity;
- d. Strengthening the unity and integrity of the nation;
- e. Enrich the life of a nation;
- f. Improve the nation's image;
- g. Realizing civil society;
- h. Improving people's welfare;
- i. Preserving the nation's cultural heritage, and
- j. Influence the direction of development of world civilization.

Based on Article 44 of Law Number 5 of 2014 concerning the Promotion of Culture, the Regional Government in accordance with its administrative area is tasked with guaranteeing freedom of expression; ensure the protection of cultural expressions; establish a mechanism for community involvement in the promotion of culture. With the issuance of this new law by the Government, traditional knowledge, traditional technology, especially the Batak Toba indigenous people which have been inherited from generation to generation can be protected by law so that they are not claimed by other countries as products of that country.

Steps that need to be taken by the Government are reviewing regulations and creating a sui generis system that is used to protect Communal Intellectual Property, preparing a National Data Center so that existing documentation can be collected in one place so that it can be used properly for KIK, trying to always preserve it by develop and promote existing KIK for the benefit and benefit of the communal community, establish a special agency or institution to carry out regulations and make the best mechanism that does not make it difficult for the community. The local government should also pay more attention to the complaints and obstacles of the Batak community which slows the development of the intellectual property of the community.

Voicing throughout the country to register all KIK they have so that they can provide economic benefits and benefits for the indigenous peoples who own the wealth. Responsibilities between the Central Government and Local Government are not much different. The role of the Central Government is responsible for supervising any provisions or regulations that are made, while the Regional Government is responsible for implementing them.

### **CONCLUSION**

The conclusion that can be drawn from this research is the existence of a statutory regulation governing Copyright and the National System of Research, Development and Application of Science and Technology of Intellectual Property Rights and the government's efforts to protect and develop the Toba Batak KIK.

It is hoped that the government will form its own KIK laws and regulations and form a KIK handling group in the midst of society and try to change the concept of thinking of the Toba Batak people about preserving and protecting the Toba Batak ethnic KIK.

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