

PROTECTION STRENGTHENING MODEL OF COMMUNAL INTELLECTUAL PROPERTY: TRANSPLANTING THE POLICY CONTENT INCLUDING LAW-BASED BENEFIT-SHARING

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ABSTRACT

Regulations regarding the protection of communal intellectual property in Indonesia are currently scattered in various regulations that are not explicitly stated in the form of Laws, and do not regulate benefit-sharing comprehensively. The purpose of this research is to elaborate on a protection strengthening model of Communal Intellectual Property based on the transplantation of policy content related to works of tradition, culture, custom, traditional knowledge, genetic resources and potential geographical indications from various existing legal policies and other sources both locally, nationally and internationally into the legal form of a Law, as well as a benefit-sharing regulation mechanism related to the commercial use of Communal Intellectual Property. The research method used is normative legal research with statutory, comparative, conceptual and analytical approaches. The results of the research showed that the current policy regarding Communal Intellectual Property in Indonesia is still in the hierarchy of Regulations of the Minister of Law and Human Rights and Government Regulations, namely Permenkumham 13/2017 and PP 56 of 2022. Several articles in the provisions of statutory regulations on Intellectual Property in Indonesia have regulated Communal Intellectual Property, but its nature is still very general. For stronger protection and legal certainty it is very urgent to regulate the protection policy in the form of a Law through a transplantation model of the substance of existing legal products related to Communal Intellectual Property, as well as strengthening of policy content including benefit-sharing in relation to the commercial use of Communal Intellectual Property.

Keywords: Communal Intellectual Property; Policy Content; Profit Sharing; Protection Strengthening; Transplantation.

1. INTRODUCTION

In the midst of the influence of digital technology that has hit almost all lines of human life including science, the existence of traditional knowledge and traditional cultural expressions is an important component to gain legal recognition and protection from the state, because their existence apart from being the identity and cultural identity of the people, also, traditional knowledge in the field of medicine plays an important role for the continuity of the community's public health, even traditional knowledge is also related to natural disaster risk management.

The existence of traditional knowledge, community attachment, and local community life arrangements based on cultural values that manifest from ancestral heritage, from time to time in various aspects has been

able to become an alternative solution in reducing the risk of the dangers faced in human life, including in anticipating and managing the risk of natural disasters. Hadlos study, Arvin et., Al (2022) argued that community knowledge and oral stories as cultural expressions in the Simeulue community, for example, have reminded that inherited knowledge functions as an early warning system to save lives from natural disasters. Traditional knowledge that has been tested from time to time as well as cultural adaptation strategies known as community-based “disaster subcultures” to prepare for, respond to and mitigate disasters are important to develop to reduce the risk of natural disasters. For this reason, it is important to understand holistically and recognize the existence of local culture and indigenous knowledge in relation to a more concrete appreciation and relevance of traditional knowledge in disaster management.¹ Traditional Cultural Expressions and Traditional Knowledge as they are known in the Simeulue people, in fact in the context of Intellectual Property law are included in the Communal Intellectual Property (*Kekayaan Intelektual Komunal* ‘KIK’) family.

The KIK family apart from Traditional Cultural Expressions (*Ekspresi Budaya Tradisional* ‘EBT’) and Traditional Knowledge (*Pengetahuan Tradisional* ‘PT’), also includes Genetic Resources (*Sumber Daya Genetik* ‘SDG’) and Potential Geographical Indications (*Potensi Indikasi Geografis* ‘PIG’). Indonesia, like other developing countries, is also very rich in traditional knowledge related to plant genetic resources which are useful as ingredients for medicines. Such traditional knowledge is for example: the Sasak people of West Lombok use plants to treat asthma, the Madurese have traditional knowledge of various herbal ingredients, meanwhile the people on Wawonii Island, Southeast Sulawesi and North Sulawesi using natural resources around it as ingredients for traditional medicines and pesticides, especially bark used as a raw material for traditional medicines whose utilization is still very simple.²

In addition to traditional knowledge, Indonesia is also very rich in local wisdom in the context of its unique culture and customs which still exist, are maintained and developed today. The diversity of Indonesian culture includes traditional dances, traditional music, traditional ceremonies, traditional clothing, and traditional houses which is distinctive and unique. In the context of works of art, especially Bali, which is rich in art and culture, and is famous for its music and dance.³ In Bali, local culture and wisdom mingle very harmoniously.⁴ The uniqueness and diversity of Balinese culture is also recognized by the world, as a reflection of which Bali was chosen as host on World Tourism Day in 2022. The existence of culture and values and traditions in a society such as in Bali and other communities in Indonesia, actually constitutionally in Indonesia has received recognition and protection as mandated in Article 32 paragraph (1) of the Constitution of 1945 of the Republic of Indonesia (hereinafter referred to as “Constitution of 1945”) and Article 18B paragraph (2) of the Constitution of 1945. In this context, the state guarantees the freedom of society in developing cultural values in order to advance Indonesian national culture in the midst of world civilization, recognizing and respect the traditional rights of indigenous peoples as long as they are still alive. However, the recognition and protection of traditional knowledge, genetic resources as well as cultural arts and customs which are the cultural heritage and traditions of the ancestors in the context of intellectual property law including communal intellectual property is important to be translated into more concrete positive legal provisions, namely regulations in the form of laws.

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- 1 Arvin Hadlos, Aaron Opdyke, and S Ali Hadigheh, “Where Does Local and Indigenous Knowledge in Disaster Risk Reduction Go from Here? A Systematic Literature Review,” *International Journal of Disaster Risk Reduction*, 2022, 103160, <https://doi.org/10.1016/j.ijdr.2022.103160>, 2.
 - 2 Yulia, “The Protection of Traditional Knowledge under Indonesian Patent Law: Between Opportunities and Challenges,” *Indonesian J. Int’l L.* 18 (2020): 351, <https://doi.org/DOI: 10.17304/ijil.vol18.3.815>.
 - 3 Ni Ketut Supasti Dharmawan et al., “The Existence of Collective Management Organization for Copyrights Protection: Do Its Roles Applicable for Dance Copyright Work?” (3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022), Atlantis Press, 2023), 861–71, https://doi.org/DOI 10.2991/978-2-494069-93-0_100.
 - 4 Desak Putu Dewi Kasih et al., “Policies Concerning Sacred And Open Traditional Cultural Expressions: Tourism and Creative Economy In Bali Context,” *Jatiswara* 38, no. 1 (2023): 14–27, <https://doi.org/10.29303/jtsw.v38i1.475>.

Dances, culture related to traditional ceremonies, traditional food and drink, and traditional medicines are some examples of traditional and cultural works which apart from receiving constitutional recognition and protection, also receive protection in the realm of Communal Intellectual Property law. Apart from Intellectual Property which is of an individual nature, one of the topics of interest today is Communal Intellectual Property.⁵ Initially, Intellectual Property only provided legal protection for individual works. The emphasis on individuality by western-based IP laws (western-based IP laws) is fundamentally inconsistent with how indigenous peoples create and own the work they produce.⁶ However, in its development, Intellectual Property also provides protection for the works of communal communities through Communal Intellectual Property. The Intellectual Property comes from creativity, thought, rationality, and human intellectual abilities that have sacrificed their energy, time and effort in producing a work.⁷ In the context of Communal Intellectual Property, the existence of works of cultural expression and traditional knowledge is a transformation from ancestors, from generation to generation.

Indonesia's concern and consistency in fighting for the protection of Communal Intellectual Property need not be doubted in the midst of debates that are still pro and contra, and there are still relatively many developed countries that have not paid attention to the protection of Communal Intellectual Property. However, Indonesia continuously seeks to regulate and protect Communal Intellectual Property, even though it is still scattered in various provisions such as through Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 13 of 2017 concerning Communal Intellectual Property Data, Government Regulation no. 56 of 2022 concerning Communal Intellectual Property, Law no. 28 of 2014 concerning Copyright, Law no. 13 of 2016 concerning Patents, as well as Law no. 20 of 2016 concerning Brands and Geographical Indications.

Normatively the protection of Communal Intellectual Property which consists of: Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, and Potential Geographical Indications already exists in Indonesia, but is scattered in various provisions. In various scientific forums it is often questioned why the regulation is only at the ministerial level and is not regulated specifically in the form of law with a higher hierarchy of laws. The current regulations are also seen as inadequate, they do not comprehensively regulate benefit-sharing or profit-sharing regulation for the economic benefits resulting from the commercial use of Communal Intellectual Property work. The regulations are still vague. Who are the legal subjects who are required to pay benefit-sharing in relation to the commercial use of Communal Intellectual Property has not been strictly regulated. In fact, comprehensive and detailed benefit-sharing regulation are urgently needed considering that the commercial use of Communal Intellectual Property works is increasing, especially in the tourism area. Thus, it is important to study: (1) how is the model for strengthening the protection of Communal Intellectual Property based on the transplantation of policy content from various legal policies that already exist both locally, nationally and internationally?; and (2) How is the regulation of the benefit-sharing mechanism related to the use of Communal Intellectual Property commercially based on policy transplantation in the form of a law?

This study has originality from previous similar studies because the focus of the study is different. Among them, first by Iqbal, K. J (2023), et.al. who conducted a study on Cross-Cultural Diversity in relation to Traditional Knowledge about the use of fish species, namely traditional knowledge related to knowledge derived from hereditary traditions about knowledge about the use of fish species as ingredients for medicines relevant to Communal Intellectual Property. The results of his study show that traditional knowledge about fish

5 Desak Putu Dewi Kasih et al., "Enhancing Protection for Balinese Traditional Cultural Expression: A Government and Academician Cooperation Approaches" (3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022), Atlantis Press, 2023), 226–34, https://doi.org/DOI 10.2991/978-2-494069-93-0_27.

6 Paul Figueroa, "When Imitation Is Not Flattery: Addressing Cultural Exploitation in Guatemala Through a Sui Generis Model," *BYU L. Rev.* 46 (2020): 979.

7 Rafika Amalia and Putu Aras Samsithawrati, "Perlindungan Karya Cipta Video Dalam Rangka Proses Pembelajaran Online: Perspektif Hak Eksklusif Pencipta," *Jurnal Magister Hukum Udayana* 11, no. 3 (2022): 537–51, <https://doi.org/10.24843/JMHU.2022.v11.i03.p05>.

species in indigenous peoples (local) in South Punjab, Pakistan, apart from being efficacious for medicine, is also useful for food or entertainment, fish in relation to folklore, mythology, religion, and spirituality. Fish in traditional ethnomedicinal use, out of 26 fish species that have been documented for traditional medicinal use including: Fish species *Systomus jasa* and *Puntius punjabensis* for joint pain, *Aspidoparia morar* for stomach infections, *Securicula gora* for sunburn, *Ompok bimaculatus* for asthma, and *Ompok* treatment on the spleen. In relation to food culture, for example freshwater catfish are found as food among fishermen, showing a complex combination of symbolic and cultural components. This study also recommends related records and inventories of differences in ethno-ichthyological knowledge of the area for protection that may be useful for the sustainable use, management, and conservation of local ichthyofauna in south Punjab, Pakistan.⁸ In brief, the emphasis of this study is on inventorying the existence of traditional knowledge about fish species both in the context of traditional medicines and cultural symbols that connect the people. Iqbal, K.J. study does not include studies on benefit-sharing. Meanwhile, the author examines Communal Intellectual Property in a more comprehensive manner, not only Traditional Knowledge and Traditional Cultural Expressions, but also includes Genetic Resources and Potential Geographical Indications, as well as regulation regarding Benefit Sharing in relation to Communal Intellectual Property exploitation for commercial purposes.

Second, the results of a study by Dwijayanthi, P.T. et.al. (2022) regarding the Omed-Omedan tradition in the Sesetan community, Denpasar Bali, shows that this tradition from the Communal Intellectual Property perspective is included as EBT, as well as its commercial use of a traditional expression such as “Omed-Omedan” which is categorized as communal and then videoed into personal creations, it is important to pay attention to the protection of benefit-sharing on EBT works that have been utilized as personal creations.⁹ The study conducted by Dwijayanthi, P.T., has actually started to study protection through benefit-sharing mechanisms, but only focuses on works of Traditional Cultural Expressions not on all Communal Intellectual Property. The difference with the study in this article, the novelty lies in the benefit-sharing study which is studied comprehensively for all Communal Intellectual Property families, starting from EBT, PT, SDG, and PIG and KIK protection is transplanted from protection content material scattered in various policies transplanted into rules in the form of a law with a higher regulatory hierarchy so as to provide more legal certainty regarding protection by law enforcement.

Third, Simona Bustani, et.al. (2022) his study focuses more on legal protection and sharing economic benefits related to traditional knowledge in the subak farming system which is a type of Communal Intellectual Property.¹⁰ Although this study has focused on benefit-sharing or what is known as benefit-sharing, it is still in the area of traditional knowledge only. Whereas in this journal article, the emphasis is on the importance of protection with benefit-sharing mechanisms, not only on traditional knowledge, but comprehensively for all groups of communal intellectual property, as well as another novelty is transplanting KIK protection including benefits-sharing from various regulations transplanted into in the form of law-based policies to better guarantee legal certainty, because they are regulated in a hierarchy of provisions with a higher degree. By looking at the results of the compared studies, it can be argued that there have been no studies that have elaborated in detail, especially regarding the model of strengthening KIK protection based on policy transplantation from various legal forms to statutory legal forms relating to the protection of KIK including the regulation of benefit-sharing

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- 8 Khalid Javed Iqbal et al., “Cross-Cultural Diversity Analysis: Traditional Knowledge and Uses of Freshwater Fish Species by Indigenous Peoples of Southern Punjab, Pakistan,” *Journal of Ethnobiology and Ethnomedicine* 19, no. 1 (2023): 1–17, <https://doi.org/10.1186/s13002-022-00573-1>.
 - 9 Putri Triari Dwijayanthi et al., “Omed-Omedan as a Traditional Cultural Expression: Legal Protection of a Communal Intellectual Property in Indonesia,” *Jurnal Magister Hukum Udayana* 11, no. 4 (2022): 772–85, <https://doi.org/10.24843/JMHU.2022.v11.i04.p05>.
 - 10 Simona Bustani, Rosdiana Saleh, and Christine ST Kansil, “Dilema Perlindungan Pengetahuan Tradisional Sistem Pertanian Subak Dalam Perspektif Kekayaan Intelektual Komunal,” *Hukum Pidana Dan Pembangunan Hukum* 5, no. 1 (2022): 41–54, <https://doi.org/10.25105/hpph.v5i1.15875>.

mechanisms, especially the strictness regarding which legal subjects are required to provide benefit-sharing related to the commercial use of KIK.

In order to examine the relevance of regulating KIK protection in the form of a law through a policy transplantation model as well as more comprehensive benefit-sharing regulation, this study can state the stages of the study starting from: a study of the relevance of KIK protection through a law based on a policy transplantation that begins with: the beginning of the protection of Intellectual Property until there is recognition of the Intellectual Property protection, international policies and recognition of Intellectual Property protection, protection of Intellectual Property in Indonesia in various legal provisions, and the urgency to regulate KI in the form of *sui generis* law through law. Then on the second topic regarding benefit-sharing regulation, the study begins with international benefit-sharing regulation, the existence of benefit-sharing regulation in Indonesia related to KIK, and the importance of regulating the substance of benefit sharing in KIK protection, especially legal subjects who are required to pay benefit sharing related to the use of KIK commercially. With such a systematic phasing of studies, it is also intended in order to affirm the purpose of this research to elaborate and determine a model for strengthening the protection of relevant Communal Intellectual Property based on the transplantation of policy content transplantation from various legal policies that already exist both locally, nationally and internationally into a policy-based laws, and aims to formulate regulation for benefit-sharing mechanisms related to the use of Communal Intellectual Property commercially based on policy transplantation in the form of laws.

2. RESEARCH METHOD

The type of research used in this study is a type of normative legal research method that discusses the protection of Communal Intellectual Property through law-based legal transplantation. The use of normative legal research in this study is relevant because in the regulation of the protection of communal intellectual property there still seems to be a blurring of norms, especially regarding benefit-sharing in the context of commercial use of KIK. Even in Law no. 28 of 2014 concerning Copyright related to EBT protection as well as in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 13 of 2017 concerning Communal Intellectual Property Data, it appears that there is a legal vacuum or a void in norms related to benefit-sharing regulation. This type of relevant normative legal research method is used in research where the problem focuses on the problem of norms, both conflict norms (*conflicten van normen*), unclear or vague norms (*vague van normen*), and empty norms (*leemten van normen*).¹¹ In this study, which departs from the existence of blurring of norms and void of norms, it is deemed appropriate to use a statutory approach, a comparative approach, and a conceptual approach as a solution to legal uncertainty due to blurring of norms and void of norms in the regulation of KIK protection in Indonesia.

The legal materials examined in this research are primary legal materials and secondary legal materials. Primary legal materials are binding legal materials, in this context these legal materials originate from: TRIPs Agreement, WIPO/GRTKF/IC/40/6, WIPO/GRTKF/IC/40/18, WIPO/GRTKF/IC/40 /19, Law no. 28 of 2014 concerning Copyright, Law no. 13 of 2016 concerning Patents, Law no. 20 of 2016 concerning Trademarks and Geographical Indications, Law no. 5 of 2017 concerning the Promotion of Culture, Law Number 13 of 2022 concerning the Formation of Legislation, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 13 of 2017 concerning Communal Intellectual Property Data, Government Regulation no. 56 of 2022 concerning Communal Intellectual Property, and Bali Governor Regulation Number 1 of 2020 concerning Management of Balinese Fermented and/or Distilled Beverages. Meanwhile, secondary legal materials are legal materials that provide an explanation of primary legal materials. In this research, secondary legal material comes from studies on KIK protection, both contained in various literature and journals that study KIK protection related to benefit sharing in relation to the commercial use of KIK. The technique for

11 I Made Pasek Diantha, Ni Ketut Supasti Dharmawan, and I Gede Artha, *Metode Penelitian Hukum Dan Penulisan Disertasi* (Denpasar: Swasta Nulus, 2018), 4.

collecting legal materials uses document study techniques through library research. Legal material which is the result of a document study is then systematically processed according to the subject matter, then analyzed descriptively qualitatively to obtain comprehensive answers to the focus of the problems studied.

3. DISCUSSION

Protection Strengthening Model of Communal Intellectual Property Through Policy Transplantation from Various Legal Forms to Statutory Legal Forms

The development of digital technology, transportation and science has made various works in the KIK field easier to access globally than before. KIK works such as traditional dances, traditional music and traditional ceremonies, for example, can be watched not only offline during performances or ceremonies, but by the whole world online anytime anywhere. Traditional medicines or traditional drinks in an area, such as *loloh cemcem* from Bali, can be enjoyed easily by people in other places, such as in Jakarta, because express delivery services that are able to send food and/or drinks quickly and maintain their quality are commonplace these days. This shows that this development has had a positive impact on the preservation and development of KIK in the world, including in Indonesia. On the other hand, technological sophistication can also encourage cultural interaction and exchange between communities.

Initially, Intellectual Property which provided protection for individual works, in its development began to provide protection for communal communities through the realm of KIK. The World Intellectual Property Organization (hereinafter “WIPO”) recognizes the existence of communal intellectual property protection from an indigenous community or indigenous peoples in the form of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). According to WIPO, the documentation of TK and TCEs is a process in which TK and TCEs are identified, collected, regulated, registered or registered.¹² At the international level, the 2019 WIPO General Assembly through WO/GA/51/12 continuously recorded and accelerated its work to ensure balanced and effective regulation for the protection of Genetic Resources (GR), Traditional Knowledge (TK), and Traditional Cultural Expressions (TCEs) in order to complete work related to international legal instruments using all WIPO’s pre-existing working documents, namely: WIPO/GRTKF/IC/40/6, WIPO/GRTKF/IC/40/18 and WIPO/GRTKF/IC/40/19.¹³ Furthermore, IGC-mandate point d. confirms that the WIPO General Assembly agrees that the Committee’s mandate is renewed, without reducing the work done in other forums, through the agenda in 2022-2023 continuously updating the protection of GR, TK, as well as TCEs by using all of WIPO’s previous work documents and the Chair’s Text on the Draft Instrument International Law as well as adding contributions from Member States, through the collection and identification of domestic laws, impact assessments, databases, then compiling and making available online information on national and regional sui generis regimes related to the protection of GR, TK, TCEs.¹⁴ If we pay close attention as stated in the IGC-mandate point d. and the 2022-2023 WIPO agenda can be stated that actually at the international level WIPO, the strengthening of protection for GR, TK, TCEs is continuously being updated by improving previous documents and complementing them with contributions from member countries.

At the national level in Indonesia, in line with efforts at the international level regarding KIK protection, policies have been regulated through the Regulation of the Minister of Law and Human Rights Concerning

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- 12 WIPO, “Documentation of Traditional Knowledge and Traditional Cultural Expressions,” , https://www.wipo.int/tk/en/tk_and_tces.html, diakses tanggal 8 April 2023, pukul 19.39 WITA.
 - 13 Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, “The Protection of Traditional Knowledge: Draft Articles, WIPO/GRTKF/IC/44/4,” WIPO, July 7, 2022, https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_44/wipo_grtkf_ic_44_4.pdf, 1, diakses tanggal 8 April 2023, pukul 20.00 WITA.
 - 14 Assemblies of the Member States of WIPO Sixty-Second Series of Meetings, “Report on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC),” WIPO, 2021, <https://www.wipo.int/export/sites/www/tk/en/docs/igc-mandate-2022-2023.pdf>, 2, diakses tanggal 11 April 2023, pukul 07.51 WITA.

KIK Data. In line with the meaning of WIPO's documentation of KIK which was explained earlier, KIK in Indonesia is inventoried and recorded at the Indonesian KIK National Data Center. One of the aims of this KIK inventory is for defensive protection, which is to prove that the KIK that was successfully inventoried is KIK from Indonesia and to provide protection for the rights of indigenous peoples to prevent unauthorized use and/or unfairness in profit sharing for commercial use of them¹⁵. As a comparison, in India, for example, a similar thing has been created, namely the Traditional Knowledge Digital Library, which is a digital archive that collects and catalogs information on pharmaceutical practices and formulas originating from the four main branches of traditional Indian medicine, namely Ayurveda, Yoga, Unani and Siddha¹⁶. The digital library emerged from the Scientific and Industrial Research Council of India where the approach was felt to be proactive in countering the seizure of Indian PTs by foreign parties in the future. Study of Widyanti, Yenny Eta (2021) also shows that apart from protecting collective cultural heritage on a defensive basis, it is also important on a positive basis. As in the context of the protection of positive Traditional Cultural Expressions, regulations are needed from the international convention level to the litigation process. Meanwhile defensive protection through inventory and data documentation activities in the framework of security, preservation and promotion of EBT. The two models of protection will be more comprehensive because they both cover protection from aspects of IP and non-IP, ownership and non-ownership, exclusive or non-exclusive in accordance with the principle of flexibility.¹⁷

Regulation regarding the definition of KIK can be found in Government Regulation no. 56 of 2022 concerning Communal Intellectual Property and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 13 of 2017 concerning Communal Intellectual Property Data, both of which specifically contain material regarding KIK. However, there are differences in the definitions and types of KIK in the two regulations. In Article 1 number (1) KIK is not defined explicitly, but its regulations directly determine the types and scope of KIK. Where according to the article KIK is KI in the form of PT, EBT, SDG and PIG. Meanwhile, in Government Regulation no. 56 of 2022 Concerning Communal Intellectual Property, the definition of KIK focuses more on that IP is communal and has economic value as stipulated in Article 1 point 1 of the Government Regulation. Then in Article 4 PP 56/2022 it is further elaborated that KIK consists of EBT, PT, SDG, Indication of Origin (IA), and PIG. Based on this description, it can be seen that Government Regulation No. 56 of 2022 concerning Communal Intellectual Property as a newer regulation issued than the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 13 of 2017 concerning Communal Intellectual Property Data, it turns out that it has 1 (one) additional type of KIK type coverage, besides its scope consisting of EBT, PT, SDG and PIG, it also includes IA. In this study, the scope of the intended KIK discussion will refer to all the more complete types of KIK contained in Government Regulation No. 56 of 2022 concerning Communal Intellectual Property, namely EBT, PT, SDG, IA and PIG.

In its development, by paying close attention to the provisions mentioned above, actually KIK in Indonesia has relatively comprehensive regulations, it's just that they are scattered in various provisions and most of the regulations are defensive in nature. The provisions governing KIK which specifically only regulate KIK can be observed from the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 13 of 2017 concerning Communal Intellectual Property Data and Government Regulation no. 56 of 2022 concerning Communal Intellectual Property. Meanwhile in other provisions, for example in Law no. 28 of 2014 concerning Copyright, KIK regulation related to EBT are only included in the Copyright provisions. Through Article 38 of Law no. 28 of 2014 concerning Copyright related to EBT stipulates that the

15 Desak Putu Dewi Kasih et al., *Hukum Kekayaan Intelektual Komunal Dan Inventarisasi Ekspresi Budaya Tradisional* (Denpasar: Sari Kahyangan Indonesia, 2023), 91-92.

16 Martin Fredriksson, "Balancing Community Rights and National Interests in International Protection of Traditional Knowledge: A Study of India's Traditional Knowledge Digital Library," *Third World Quarterly* 43, no. 2 (2022): 352-70, <https://doi.org/10.1080/01436597.2021.2019009>.

17 Yenny Eta Widyanti, "The Legal Instrument of Protecting Traditional Cultural Expressions Ownership in Intellectual Property Rights Law," *Technium Social Science Journal* 21 (2021): 492-501.

copyright to EBT is held by the State. The obligation to inventory, protect and maintain it rests with the State. Further provisions related to EBT through Article 38 paragraph (4) of the Copyright Law are determined to be regulated later through a Government Regulation. It was these provisions that later became the basis for consideration for the stipulation of Government Regulation No. 56 of 2022 concerning Communal Intellectual Property. Apart from going through the Law on Copyright, KIK regulation can also be observed from Law no. 13 of 2016 concerning Patents. Specifically Article 26 of Law No. 13 of 2016 concerning Patents stipulates that in essence it regulates that if an invention is related to or originates from genetic resources or traditional knowledge, the origin of the invention must be stated clearly and correctly in the description of the invention. Furthermore, if one looks closely, actually Law No. 13 of 2016 concerning Patents has begun to regulate benefit-sharing through regulation for profit sharing and access to the use of SDGs and PT implemented in accordance with legislation and international agreements in this field. This provision does not necessarily provide an answer regarding in what case profit sharing is prioritized, who is obliged to provide profit sharing, and what is no less important is that one still has to examine the legislation referred to by law, including international conventions. Regulations regarding KIK can also be observed from Law no. 20 of 2016 concerning Marks and Geographical Indications, particularly through the provisions of Article 52-Article 62 of Law no. 20 of 2016 concerning Brands and Geographical Indications which discuss IG. Apart from IG, KIK type IA is also regulated in Article 63-Article 65 of Law 20/2016. Unlike Law No. 13 of 2016 concerning Patents which already regulates benefit sharing although it is still brief, in Law no. 20 of 2016 concerning Marks and Geographical Indications there is no regulation regarding profit-sharing or benefit-sharing related to access to utilization of geographical indications whose ownership protection is communal. By looking at the various policies related to the protection of KIK, even though they are scattered in various provisions and there is no explicit regulation regarding the Benefit-Sharing mechanism, it can be argued that at least the provisions that currently exist mandate that inventory activities be carried out on the existence of KIK in the areas throughout Indonesia which is an obligation of the State with the support and cooperation of the Regional Government and the participation of the Custodian community where these works grow and develop.

Apart from being at the national level, KIK regulation can also be observed at the local level. One example in Bali. By understanding that the objects of KIK protection are relatively in contact with cultural arts, traditions and customs, as well as traditions that have developed and been inherited from the noble values of previous generations, related to these substances, the regulation can also be observed in several forms of local legal provisions in Bali, although not specifically referring to it as KIK. For example, the provisions on the Strengthening and Protection of the Balinese Sacred Dance, known as the “Joint Decree on the Sacred Balinese Dance.” This provision is relevant in relation to KIK because traditional dances include traditional dances that are sacred, in the context of KIK including or being part of EBT. The next example at the local level is Bali Governor Regulation Number 1 of 2020 concerning Management of Balinese Fermented and/or Distilled Beverages, where traditional drinks in the realm of KIK are included in the object of protection for PT. In its development, the Province of Bali, which is rich in KIK, through the collaboration of various stakeholders such as the Ministry of Law and Human Rights, local government, the National Research and Innovation Agency, the Regional Research and Innovation Agency, campuses, custodial communities and other stakeholders has succeeded in carrying out inventories and records. the KIK family as illustrated in Table 1 below.

**Table 1. Number of Communal Intellectual Property in Bali Province
That Has Been Inventoryed and Recorded**

Total Intellectual Property				
Category	EBT	PT	SDG	IG
Provinsi Bali	3	7	1	0
Denpasar	5	0	0	0
Badung	10	0	0	0
Gianyar	10	0	0	1
Klungkung	2	0	0	1
Bangli	2	1	0	1
Tabanan	8	0	0	1
Karangasem	8	0	0	4
Jembrana	2	0	0	0
Buleleng	7	1	1	0

Source: processed by researchers from diagrams displayed in <http://portalkanwilbali.kemenkumham.go.id/cominpro/>

Referring to the development of innovation and creativity supported by advances in digital technology today, it can be seen that relatively many creative works that have high economic value tend to originate from KIK works. The use of KIK as a product of the creative economy in various sectors including the tourism sector, such as the use of traditional knowledge in the field of traditional food as one of the reliable gastronomy in the hospitality business, or the creation of digital films or videos about the existence and development of a traditional dance which is a growing EBT and developing in a certain custodial society turns out to be a work that generates high economic value for the maker, even through research and studies on natural resources and traditional knowledge about medicines then produces inventions and patent protection for parties outside the custodial society, the development of such phenomena certainly not in favor of the custodian community from the context of KIK protection, in which the existence of cultural arts that has been inherited from generation to generation, as well as knowledge about traditions, are vulnerable to unauthorized use by foreigners and/or outside the custodial community. In this context, it is appropriate that KIK regulation is regulated not only to be defensive in nature which tend to be scattered in various provisions, but urgently to be regulated in a comprehensive manner with the substance of the regulation being defensive and positive at the level of statutory legal provisions, which specifically regulates KIK at the statutory level. Legal policies regulated at the level or form of laws have a stronger legal power hierarchy as can be observed from Article 7 of Law Number 13 of 2022 concerning Formation of Legislation. In this context, the urgency for regulating KIK in the form of a KIK Law in a sui-generis is to have more legal certainty, compared to KIK regulations which currently exist and are scattered in various legal provisions related to KIK.

The urgency of KIK regulation at a higher level is actually a reflection of the seriousness of the Indonesian government both nationally and in the context of being a member state of various international conventions in protecting KIK. In regulating legal protection for KIK, it seems that they have not given maximum attention to protecting KIK, especially protection in the form of a higher hierarchical law, namely regulating sui-generis in the form of laws relating to the protection of KIK. Strengthening KIK protection in a higher hierarchical legal form is the right momentum, including being in harmony and in line with efforts to protect KIK at the international level which are continuously followed up and updated by the WIPO Working Group as developments can be followed through the IGC Agenda 2022-2023.¹⁸ Given the recognition of KIK

18 "Report on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).", <https://www.wipo.int/export/sites/www/tk/en/docs/igc-mandate-2022-2023.pdf>, diakses tanggal 11 April 2023, pukul 07. 20 WITA.

protection at the international, national and local levels, the embryo actually already exists, but it is scattered in various regulatory hierarchies such as at the international level in the form of recommendations, at the national level in the form of Permenkumham, PP and scattered in several articles of IP legislation and laws. Promotion of Culture, as well as at the local level in the form of Regional Regulations and in other legal forms locally including from the Adat law aspect, strengthening KIK protection in the form of a hierarchy of laws would be relevant through the momentum of policy transplantation.

Legal transplantation according to Alan Watson is “the borrowing and transmissibility of rules from one society or system to another”.¹⁹ By understanding the concept of legal transplantation, it can be argued that the material content or regulatory substance regarding a policy can essentially be moved or transplanted to another new place. In this context, from the protection of KIK, the content material is transplanted from the Ministry of Law and Human Rights, Government Regulations and various laws at the national level as well as provisions at the international level into the form of laws that specifically and comprehensively regulate KIK. Policies or content materials regarding KIK that already exist in existing laws and regulations (PP 56/2022 and Permenkumham 13/2017), provisions related to KIK in the Regional Regulations of Bali Province and other Provinces, regulations in the Copyright Law, The Patent Law, the Trademark Law and Geographical Indications, and the Culture Advancement Law related to KIK, as well as the content of KIK protection material which is the result of recommendations, discussions and important notes as in WIPO/GRTKF/IC/40/6, WIPO/GRTKF/IC/40/18, WIPO/GRTKF/IC/40/19, and the IGC Mandate 2022/2023 WIPO, were transplanted into a new legal form, namely in the form of Sui-Generis Law which specifically regulates KIK. Through this transplantation method, it is hoped that it can strengthen protection for KIK with legal certainty, benefit and justice, considering that the sui-generis KIK provision in the form of an Act has a higher hierarchy than those only at PP 56/2022 or Permenkumham 13/2017. In addition, the existence of KIK protection will be easier to know because it is regulated in one provision of the Law on KIK. In addition to the policy content regarding KIK that already exists in PP 56/2022 and Permenkumham 13/2017 which will be transplanted into the Law on KIK, one of the new clarification nomenclature that is very important to include is regarding what is benefit-sharing, who is are required to provide benefit-sharing, as well as how the implementation mechanism for benefit-sharing is related to the commercial use of KIK’s work. Benefit-sharing regulation as a form of KIK protection and recognition are urgent and a solution to legal issues in the KIK sector that remain unanswered, especially regarding the benefit-sharing mechanism.

Benefit-sharing regulation Related to Commercial Use of Communal Intellectual Property Based on Transplantation Policy in the Form of Law

Benefit-sharing is one of the important content materials that should be regulated in the framework of KIK protection. Indonesia as a country that is very rich with a variety of traditions, customs and culture whose existence has been passed down from generation to generation has actually regulated the protection of KIK through Permenkumham No. 13 of 2017 and PP No. 56 of 2022. However, these two provisions do not yet regulate access to benefit-sharing in a comprehensive manner, including the mechanism for its implementation. The KIK provisions that currently exist seem to be more focused on regulating the various protected KIK, namely: EBT, PT, SDG, PIG, and IA, as well as the obligation to inventory and record them. Benefit-sharing regulation are very important, especially in the context of the commercial use of KIK by foreign parties and large industries, which produce creative economic creations and industrial products with high economic value by utilizing traditional knowledge, traditional cultural expressions and genetic resources owned, grown and developed in a custodial society in a certain area. In this context, it is appropriate for the custodian community as the successor and bearer who sustainably maintains, preserves and uses it in accordance with the noble values that underlie the existence of KIK to receive benefits sharing related to the commercialization of KIK.

19 Ahmad Ulil, Sakti Lazuardi, and Ditta Chandra Putri, “Arsitektur Penerapan Omnibus Law Melalui Transplantasi Hukum Nasional Pembentukan Undang-Undang,” *Jurnal Ilmiah Kebijakan Hukum* 14, no. 1 (2020): 1–18, <http://dx.doi.org/10.30641/kebijakan.2020.V14.1-18>.

One form of KIK commercialization in the field of traditional knowledge is the use of traditional knowledge as patent inventions. An example is the finding of patents related to Neem seeds. Indians know and use Neem seeds which have various medicinal properties. Traditional knowledge possessed by communal communities from a particular region and country, is often used through research activities by foreign researchers to produce inventions that receive patent protection. It is felt that it is very unfair if the economic benefits of the commercialization of traditional knowledge are only enjoyed by foreign researchers regardless of the source of origin of these findings which are actually traditional knowledge that has been known for a long time in the communal community. Kholis Roisah (2021) emphasizes that KIK can be in the form of traditional creations, traditional knowledge that contains elements of technology or traditional findings that contain local wisdom values. These works are generally transmitted orally, anonymously, hereditary, preserved and developed which are the cultural identity of the community.²⁰ Furthermore, Kholis Roisah (2022) emphasizes the importance of protecting and respecting communal works such as EBT by anyone, including the state. In this context, even though communal works are inherited from the ancestors, of course in that era it was not impossible for these works to be realized with a lot of struggle and work effort that was no less time-consuming than individual KI works today. Therefore, KIK protection is relevant and not excessive if it is related to natural rights theory - Locke's Labor Theory in the context of protection of ownership. Through analogy, the community's hard work or outpouring of labor legitimizes the protection of ownership of communal works.²¹ As is the case in the context of individual IP protection, the protection of KIK that is used commercially by parties outside the community becomes relevant to the concept of recognizing, respecting, and rewarding through Access Benefit-Sharing. The concept of recognizing and respecting in this context must also be remembered and must not be ignored, the concept of ownership has a social function. In KIK it is very important to recognize and respect the noble and religious values that underlie these traditional works. For example, NRE which is sacred, closed in nature, must be upheld, and may not be commercialized. In this context, the government, especially the Regional Government that is closest to the custodian community should work hand in hand with the custodian community to remind each other, look after each other, preserve each other, respect, especially sacred EBT works as one of KIK so that they don't be commercialized, even if for benefit-sharing purposes. In short, it can be stated that sacred KIK works do not require a benefit-sharing mechanism, because their designation is not for commercial purposes.

In discussions about access to profit sharing at the international level in the context of protecting PTs, TCEs, and GRs that are used for commercial purposes, the concept of protection generally refers to the Convention on Biological Diversity (CBD). Thus in the WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/C/370/Rev.1 on 9 March 2006 regarding the discussion on the protection of PT also refers to the CBD which emphasizes the relationship between the TRIPs Agreement, specifically Article 27.3 (b) TRIPs Agreement with CBD. Important notes which are discussed in IP/C/370/Rev.1 on 9 March 2006 consist of three pillars, namely: The first pillar, general issues related to the protection of Traditional Knowledge. The second pillar, the granting of patents is related to traditional knowledge. The third pillar, sharing of benefits or benefit-sharing on the utilization of Traditional Knowledge. In the CBD context, utilization of Traditional Knowledge and Genetic Resources in relation to access to revenue sharing refers to Article 15 (7) CBD. Council TRIPs, IP/C/370/Rev.1 on 9 March 2006 also recommends that Benefit-sharing regulation may use the following mechanisms: Use of the existing IPR system, Contracts, Disclosure Requirements, and Sui-generis System of protection. It is hoped that the important notes from this working group can be used as an important basis and consideration for regulating KIK protection in the future, including Access-benefit sharing through the Sui-generis System of protection mechanism. In this context, for example, regulate through the

20 Kholis Roisah, *Perlindungan Ekspresi Budaya Tradisional Perspektif Hukum Internasional Dan Nasional* (Semarang: Yoga Pratama, 2021), 4-5.

21 Purnama Hadi Kusuma and Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107-20, <https://doi.org/10.14710/jphi.v4i1.107-120>.

legal form of the Act by transplanting the substance and content material from various legal sources, both national legal instruments and international legal instruments.

At the international level, besides the TRIPs Council, IP/C/370/Rev.1.2006, the WIPO Institute is also very consistent in initiating and promoting KIK protection. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) continues to work continuously, with reference to the IGC Mandate 2022/2023 it can be stated that in the 2022-2023 discussion agenda related to the protection of TK/TCE and GR still accommodate and continuing previous working group discussions.²² Furthermore, it can be observed that the WIPO General Assembly agreed to the existence (Mandate of the Committee) being renewed, in this context, without prejudice to the work carried out in other forums, providing a mandate that The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Committee) will use all WIPO documents including WIPO/GRTKF/IC/40/6, WIPO/GRTKF/IC/40/18, WIPO/GRTKF/IC/40/19 and Chair's Text regarding the design of international legal instruments related to intellectual property, GR, TK in relation to the SDGs, as well as the contribution of member countries that have updated their studies on core issues such as: Definition, Distribution and Beneficiaries, Purpose, Scope, TK/TCEs are entitled to be protected in international level, including exceptions and limitations and their relation to the public domain, as well as information on national and regional regimes sui generis relating to the protection of TK/TCE and GR from an intellectual property perspective. In short, it can be stated that Access Benefit-Sharing related to the recognition and protection of KIK is one of the important discussions on the IGC Mandate 2022/2023 agenda. At the Indonesian national level, as previously stated that Indonesia's seriousness in protecting KIK which grows and develops in almost all regions in Indonesia, has actually been accommodated through various policies related to KIK protection, but its existence is still scattered in various provisions such as through Law no. 28 of 2014 concerning Copyright, Law no. 13 of 2016 concerning Patents, Law no. 20 of 2016 concerning Trademarks and Geographical Indications, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 13 of 2017 concerning Data on Communal Intellectual Property, as well as Government Regulation no. 56 of 2022 concerning Communal Intellectual Property. Likewise at the local level, such as the Province of Bali, which has regulated KIK. However, it is important to regulate KIK comprehensively as stated explicitly in a legal form of law. By explicitly regulating KIK in a legal form with a higher degree, namely in the form of a law, it will further strengthen the protection of KIK and have more legal certainty.

Access Benefit-Sharing was discussed more specifically through WIPO/GRTKF/IC/42/11 in Geneva in 2022. The discussion document on ABS was submitted by delegations from Canada, Japan, Norway, Korea, Russia and the United States to resubmit the document "Proposal for the Terms of Reference for the Study by the WIPO Secretariat on Measures related to the Avoidance of the Erroneous Grant of Patents and Compliance with Existing Access and Benefit Sharing Systems," which essentially emphasizes protection, namely: 1. Protection Against Misappropriation; 2. Legal Form of Protection; 3. General Scope of Subject Matter; 4. Eligibility for Protection; 5. Beneficiaries of Protection; 6. Fair and Equitable Benefit-sharing and Recognition of Knowledge Holders; 7. Principle of Prior Informed Consent; 8. Exceptions and Limitations; 9. Duration of Protection; 10. Transitional Measures; 11. Formalities; 12. Consistency with the General Legal Framework; 13. Administration and Enforcement of Protection; 14. International and Regional Protection.²³ In this context, the proposal on equitable distribution of results is one of the important proposals discussed in the working group.

22 "Intergovernmental Committee (IGC) Mandate 2022/2023," WIPO, 2021, <https://www.wipo.int/tk/en/igc/>, diakses tanggal 11 April 2023, pukul 07. 59 WITA.

23 Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, "The Protection of Traditional Knowledge: Revised Objectives And Principles," WIPO/GRTKF/IC/17/5, Annex (WIPO, 2010), https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_17/wipo_grtkf_ic_17_5.pdf, diakses tanggal 19 April 2023, pukul 14.06 WITA.

By looking closely at the discussion at WIPO/GRTKF/IC/42/11 in Geneva in 2022 as stated above, it can be stated that there are at least a number of 13 content materials that are important to consider in regulating the protection of KIK both at the international and regional levels, namely: policy content material that regulates protection in relation to the misuse of a country's traditional cultural works by other countries for commercial purposes (Protection Against Misappropriation). In this context, it is important for regulatory models at the national level to include regulations explicitly regarding protection against misappropriation. With regard to the Legal Form of Protection, although it was not explicitly determined in discussions at the international or regional levels, for a model of strengthening protection at the national level in Indonesia, it is best if the form of protection is regulated in the form of a law to further guarantee legal certainty. Regulations regarding the scope of coverage of the protective load (General Scope of Subject Matter) are also important cargo material for transplanting. In its development, the scope of the KIK protection content includes: TCE, TK, GR, GI, and SI. Another important content that is important to consider is Eligibility for Protection. In this context, professionalism in carrying out inventory activities and the ability to describe inventory results in the framework of, for example, recording the existence of works of traditional culture and traditional knowledge will greatly determine the eligibility of protection. Other important content material is regulating Beneficiaries of Protection, Fair and Equitable Benefit-sharing and Recognition of Knowledge Holders. It is very important to clarify the arrangements regarding who are the beneficiaries of the use of traditional works in commercial activities. Benefit sharing in this context is intended as a form of acknowledgment of traditional knowledge that has been owned and developed from generation to generation by the custodian community. Content material that is no less important in strengthening Kik protection is the consistency of regulation at the local, national, regional level with regulation at the international level.

Furthermore, in order to promote innovation and creativity, the Policy Objective emphasizes that the aim is to promote, value, and protect tradition-based creativity and innovation and increase the internal transmission of traditional knowledge within local communities, as well as other communities with the approval of traditional knowledge holders, by integrating knowledge into educational initiatives among communities, for the benefit of holders and maintainers of traditional knowledge. The protection mechanisms are: ensuring informed consent, prior information exchange, use of traditional knowledge on mutually agreed terms, in coordination with existing international and national regimes governing access to genetic resources. The Policy Objective also expressly stated to promote fair benefit sharing related to the use of traditional knowledge, in accordance with the applicable international regime, as well as the principle of prior informed consent, and including through fair compensation in special cases where individual rights holders are not known or knowledge has been disclosed, promotes community development and lawful trading activities if so desired by holders of traditional knowledge, promotes the use of traditional knowledge for community-based development, recognizes the rights of traditional and local communities to their knowledge; and promote the development, and expansion of marketing opportunities for indigenous traditional knowledge products and related community industries, where holders of traditional knowledge seek such development and opportunities in accordance with their right to freely enjoy economic development.

At the national level, as previously discussed, Indonesia has regulated profit sharing in relation to SDGs as a source of invention through Article 26 of Law no. 13 of 2016 concerning Patents. The provisions of Article 26 basically regulate that inventions originating from SDG and PT must be mentioned in the patent description as a form of protection for the source of the invention, which is intended so that the source of the invention is not recognized by other countries in relation to benefit sharing.²⁴ Furthermore, can be observed from Article 26 paragraph (3) of Law no. 13 of 2016 concerning Patents that the distribution of benefits related to the utilization of SDG and PT internationally refers to the CBD as well as the Nagoya Protocol which has also been ratified by Indonesia. The Nagoya Protocol basically regulates that member countries are obliged to

24 Ferianto and Tommy Hendrix, "Pelindungan Hukum Terhadap Sumber Daya Genetik Dan Pengetahuan Tradisional (SDG-PT) Pasca Diundangkannya Undang-Undang Nomor 13 Tahun 2016 Tentang Paten," JIPRO: Journal of Intellectual Property, 2020, 31–41, <https://doi.org/10.20885/jipro.vol3.iss1.art2>.

regulate through relevant national regulations regarding access to the wealth of biological resources that are in their sovereign territory, emphasizing the recognition of the rights of indigenous/traditional peoples to wisdom, knowledge and innovation in the utilization of this biodiversity which has developed in line with the culture of the local community. Any party wishing to access and use it is to obtain permission as “prior informed consent” or permission for initial information. Access and utilization by parties outside the community refers to agreements (contracts) made between beneficiaries and the community, with a balanced position.²⁵ In this context it can be argued that the state is present to regulate the protection and recognition of the existence of SDGs and PT, permits are an obligation, then the contract becomes an agreement between the commercial user company and the community. Safeguard legal instruments in the form of contracts between custodians and parties who use traditional works commercially still have the potential to be elaborated in further research, especially in determining what elements of the contract are important to include in the contract clauses, as well as the importance of adding to the considerations the nomenclature of the state present in protect KIK.

Apart from the Patent Law, Access Benefit-Sharing to traditional knowledge is also regulated in Law no. 5 of 2017 concerning the Advancement of Culture. In the context of Law no. 5 of 2017 concerning the Advancement of Culture, traditional knowledge, traditional technology, rites, oral traditions, manuscript customs, arts, languages, folk games and traditional sports are known as objects of cultural advancement. Access Benefit-Sharing in the context of utilizing cultural promotion objects is more comprehensively regulated. In this context, it does not only stipulate permit obligations in relation to approval on the basis of prior information, as well as the inclusion of the principles of cultural promotion objects, but also regulates more strictly what is meant as a legal subject that utilizes objects of cultural promotion for commercial purposes are large industries or foreign parties as stipulated in Article 37 of Law No. 5 of 2017 concerning the Advancement of Culture. It can be stated that those who are required to provide benefit sharing related to the use of cultural promotion objects including traditional knowledge for commercial purposes are large industries or foreign parties.

Protection for KIK whose scope includes: PT, EBT, SDG, PIG, and IA, including the regulation regarding Access Benefit-Sharing is actually very comprehensive. However, the protection regulation which currently scattered in various provisions such as in Regulations of the Minister of Law and Human Rights, Government Regulations, as well as articles in the Law such as the Patent Law and related to the Law on the Advancement of Culture, seem to be more provide legal certainty, justice and benefits if the KIK protection content material is contained in a legal form with a statutory hierarchy. The legal transplantation model seems relevant as an alternative solution, namely the mechanism for transplanting various existing legal provisions relating to the substance or content of KIK protection including: KIK inventory and recording mechanisms, permit mechanisms related to initial information approval, inclusion of KIK sources, as well as legal subjects who are required to provide benefit sharing related to the commercial use of KIK. Various legal provisions related to KIK protection that are relevant are transplanted at the international level such as: CBD referred to by the WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/C/370/Rev.1, IGC Mandate 2022/2023 which also continues WIPO /GRTKF/IC/40/6, WIPO/GRTKF/IC/40/18 and WIPO/GRTKF/IC/40/19., and Chair’s Text, WIPO/GRTKF/IC/42/11 in Geneva in 2022, which continuing WIPO/GRTKF/IC/40/17 of 2010 regarding The Protection of Traditional Knowledge: Revised Objectives and Principles which in essence emphasizes the protection stated in the Substantive Principles and Policy Objectives. At the national level, such as Permenkumham No. 13 of 2017, PP no. 56 of 2022, the Patent Law, Copyright Law, and the Culture Promotion Law. Also various provisions at the local level such as the Bali Province Regional Regulation.

25 Dwi Martini, Diman Ade Mulada, and Dewi Sartika, “Bioteknologi Tradisional Dan Sumber Daya Genetika Indonesia: Kasus Pemanfaatan Oleh Industri Farmasi,” *Jurnal Kompilasi Hukum* 5, no. 1 (2020): 129–53, <https://doi.org/10.29303/jkh.v5i1.4>.

4. CONCLUSION

The existence of KIK in Indonesia has an urgency to strengthen its legal protection through regulating KIK in a higher hierarchical legal form, namely *sui-generis* in the form of laws related to KIK protection. The legal transplant model seems relevant as an alternative solution, namely by transplanting various legal provisions that currently exist, such as PP 56/2022 and Permenkumham 13/2017 and spread across several articles on Copyright, Patent Law, Trademark Law and Indications Geographical, the Law on the Advancement of Culture related to KIK, as well as policies at the international level related to the substance or content material for KIK protection including: KIK inventory and recording mechanisms, permit mechanisms related to prior information approval, inclusion of KIK sources, as well as legal subjects required to provide benefit sharing related to the commercial use of KIK. The hope is that this can strengthen the protection of KIK which has legal certainty, benefits and justice, related to KIK content. In the legal construction in the form of an Act as a result of a policy transplantation regarding KIK in Indonesia, one of the new clarification nomenclature that is very important to include considering the many commercializations of KIK in Indonesia is regarding the concept of benefit-sharing, legal subjects who are required to provide benefit-sharing, as well as how the mechanism for implementing the distribution of benefit-sharing is related to the commercial use of KIK's work which previously had not been accommodated in the laws and regulations related to KIK. Apart from being a form of strengthening legal protection, KIK regulation in the form of this Law is a reflection of the seriousness of the Indonesian government both nationally and in the context of being a member state of various international conventions in protecting KIK.

The model for strengthening KIK protection and benefit-sharing regulation related to commercial use of KIK is relevant for transplanting content material on protection which currently exists in various forms of law both at the local, national, regional and international levels, transplanted into protection policy regulation in the form of laws to ensure legal certainty and law enforcement. The transplanted content material contains nomenclature regarding: regulation regarding actions related to misappropriation of traditional works (Protection Against Misappropriation), broad scope of KIK (General Scope of Subject Matter) protection, relevant and comprehensive legal forms in regulating KIK (Legal Form of Protection), relevant the regulatory model in the form of law, eligibility for protection, and in relation to benefit-sharing regulation is important to strictly regulate beneficiaries of protection, fair and equitable benefit-sharing and recognition of knowledge holders. It is very important to clarify the regulation regarding the beneficiaries of the use of traditional works in commercial activities, and it is relevant to consider that the categories of legal subjects who are obliged to provide benefit sharing are legal subjects in the category of large companies and foreigners who make use of traditional works commercially. In relation to benefit-sharing regulation related to access to the wealth of biological resources that are in the territory of custodial sovereignty as well as the work of EBT and relevant PTs, it emphasizes the recognition of the existence of customary or traditional community rights over wisdom, knowledge, and innovation in the utilization of this biodiversity that has developed in line with the culture of the local community. Any party wishing to access and use it is to obtain permission as "prior informed consent" or permission for initial information. Access and use by parties outside the community refer to agreements (contracts) made between beneficiaries and the community, with a balanced position. Strengthening KIK protection in a sustainable manner requires that the state is always present in protecting KIK in cooperation with local governments, academics, custodial communities, the media and what is no less important is the recognition and implementation of benefit sharing from users who make use of traditional works commercially.

REFERENCES

- Amalia, Rafika, and Putu Aras Samsithawrati. "Perlindungan Karya Cipta Video Dalam Rangka Proses Pembelajaran Online: Perspektif Hak Eksklusif Pencipta." *Jurnal Magister Hukum Udayana* 11, no. 3 (2022): 537–51. <https://doi.org/10.24843/JMHU.2022.v11.i03.p05>.
- Assemblies of the Member States of WIPO Sixty-Second Series of Meetings. "Report on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).," WIPO, 2021. <https://www.wipo.int/export/sites/www/tk/en/docs/igc-mandate-2022-2023.pdf>.
- Bustani, Simona, Rosdiana Saleh, and Christine ST Kansil. "Dilema Perlindungan Pengetahuan Tradisional Sistem Pertanian Subak Dalam Perspektif Kekayaan Intelektual Komunal." *Hukum Pidana Dan Pembangunan Hukum* 5, no. 1 (2022): 41–54. <https://doi.org/10.25105/hpph.v5i1.15875>.
- Dharmawan, Ni Ketut Supasti, I Made Sarjana, I Gede Agus Kurniawan, and Putu Aras Samsithawrati. "The Existence of Collective Management Organization for Copyrights Protection: Do Its Roles Applicable for Dance Copyright Work?," 861–71. Atlantis Press, 2023. https://doi.org/DOI 10.2991/978-2-494069-93-0_100.
- Diantha, I Made Pasek, Ni Ketut Supasti Dharmawan, and I Gede Artha. *Metode Penelitian Hukum Dan Penulisan Disertasi*. Denpasar: Swasta Nulus, 2018.
- Dwijayanthi, Putri Triari, Putu Aras Samsithawrati, Dewa Ayu, and Dian Sawitri. "Omed-Omedan as a Traditional Cultural Expression: Legal Protection of a Communal Intellectual Property in Indonesia." *Jurnal Magister Hukum Udayana* 11, no. 4 (2022): 772–85. <https://doi.org/10.24843/JMHU.2022.v11.i04.p05>.
- Ferianto, and Tommy Hendrix. "Pelindungan Hukum Terhadap Sumber Daya Genetik Dan Pengetahuan Tradisional (SDG-PT) Pasca Diundangkannya Undang-Undang Nomor 13 Tahun 2016 Tentang Paten." *JIPRO: Journal of Intellectual Property*, 2020, 31–41. <https://doi.org/10.20885/jipro.vol3.iss1.art2>.
- Figueroa, Paul. "When Imitation Is Not Flattery: Addressing Cultural Exploitation in Guatemala Through a Sui Generis Model." *BYU L. Rev.* 46 (2020): 979.
- Fredriksson, Martin. "Balancing Community Rights and National Interests in International Protection of Traditional Knowledge: A Study of India's Traditional Knowledge Digital Library." *Third World Quarterly* 43, no. 2 (2022): 352–70. <https://doi.org/10.1080/01436597.2021.2019009>.
- Hadlos, Arvin, Aaron Opdyke, and S Ali Hadigheh. "Where Does Local and Indigenous Knowledge in Disaster Risk Reduction Go from Here? A Systematic Literature Review." *International Journal of Disaster Risk Reduction*, 2022, 103160. <https://doi.org/10.1016/j.ijdr.2022.103160>.
- Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. "The Protection of Traditional Knowledge: Draft Articles, WIPO/GRTKF/IC/44/4." WIPO, July 7, 2022. https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_44/wipo_grtkf_ic_44_4.pdf.
- . "The Protection of Traditional Knowledge: Revised Objectives and Principles." WIPO/GRTKF/IC/17/5, Annex. WIPO, 2010. https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_17/wipo_grtkf_ic_17_5.pdf.
- Iqbal, Khalid Javed, Muhammad Umair, Muhammad Altaf, Tanveer Hussain, Rana Manzoor Ahmad, Sayed Muhammad Zain Ul Abdeen, Andrea Pieroni, Arshad Mahmood Abbasi, Shahzad Ali, and Sana Ashraf. "Cross-Cultural Diversity Analysis: Traditional Knowledge and Uses of Freshwater Fish Species by Indigenous Peoples of Southern Punjab, Pakistan." *Journal of Ethnobiology and Ethnomedicine* 19, no. 1 (2023): 1–17. <https://doi.org/10.1186/s13002-022-00573-1>.
- Kasih, Desak Putu Dewi, Ni Ketut Supasti Dharmawan, Anak Agung Istri Ari Atu Dewi, A.A Gede Duwira Hadi Santosa, I Gusti Ngurah Parikesit Widiatedja, Putu Aras Samsithawrati, Putri Triari Dwijayanthi, Dewa Ayu Dian Sawitri, and AA Istri Eka Krisna Yanti. *Hukum Kekayaan Intelektual Komunal Dan Inventarisasi Ekspresi Budaya Tradisional*. Denpasar: Sari Kahyangan Indonesia, 2023.

- Kasih, Desak Putu Dewi, Ni Ketut Supasti Dharmawan, Anak Agung Istri Ari Atu Dewi, I Gusti Ngurah Parikesit Widiatedja, Anak Agung Gede Duwira Hadi Santosa, and Putu Aras Samsithawrati. "Enhancing Protection for Balinese Traditional Cultural Expression: A Government and Academician Cooperation Approaches," 226–34. Atlantis Press, 2023. https://doi.org/DOI 10.2991/978-2-494069-93-0_27.
- Kasih, Desak Putu Dewi, Ni Ketut Supasti Dharmawan, Putu Aras Samsithawrati, Putri Triari Dwijayanthi, Dewa Ayu Dian Sawitri, and AA Istri Eka Krisna Yanti. "Policies Concerning Sacred And Open Traditional Cultural Expressions: Tourism and Creative Economy In Bali Context." *Jatiswara* 38, no. 1 (2023): 14–27. <https://doi.org/10.29303/jtsw.v38i1.475>.
- Kusuma, Purnama Hadi, and Kholis Roisah. "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107–20. <https://doi.org/10.14710/jphi.v4i1.107-120>.
- Martini, Dwi, Diman Ade Mulada, and Dewi Sartika. "Bioteknologi Tradisional Dan Sumber Daya Genetika Indonesia: Kasus Pemanfaatan Oleh Industri Farmasi." *Jurnal Kompilasi Hukum* 5, no. 1 (2020): 129–53. <https://doi.org/10.29303/jkh.v5i1.4>.
- Roisah, Kholis. *Perlindungan Ekspresi Budaya Tradisional Perspektif Hukum Internasional Dan Nasional*. Semarang: Yoga Pratama, 2021.
- Ulil, Ahmad, Sakti Lazuardi, and Ditta Chandra Putri. "Arsitektur Penerapan Omnibus Law Melalui Transplantasi Hukum Nasional Pembentukan Undang-Undang." *Jurnal Ilmiah Kebijakan Hukum* 14, no. 1 (2020): 1–18. <http://dx.doi.org/10.30641/kebijakan.2020.V14.1-18>.
- Widyanti, Yenny Eta. "The Legal Instrument of Protecting Traditional Cultural Expressions Ownership in Intellectual Property Rights Law." *Technium Social Science Journal* 21 (2021): 492–501.
- WIPO. "Documentation of Traditional Knowledge and Traditional Cultural Expressions." WIPO, 2023. https://www.wipo.int/tk/en/tk_and_tces.html.
- WIPO. "Intergovernmental Committee (IGC) Mandate 2022/2023," 2021. <https://www.wipo.int/tk/en/igc/>.
- Yulia. "The Protection of Traditional Knowledge under Indonesian Patent Law: Between Opportunities and Challenges." *Indonesian J. Int'l L.* 18 (2020): 351. <https://doi.org/DOI: 10.17304/ijil.vol18.3.815>.

