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LEGAL PROTECTION OF SANRO TRADITIONAL KNOWLEDGE

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ABSTRACT

This study aims to find out about the legal protection of Sanro Traditional Knowledge in South Sulawesi, and to analyze the concept of benefit sharing as a protection for Sanro traditional knowledge. This research is normative research, with a statue approach, while the data source used is secondary data in the form of statutory regulations related to Traditional Knowledge. The results of this study indicate that statutory regulations relating to Traditional Knowledge are not sufficient in providing protection. So, one of the concepts that can be applied in the protection of Traditional Knowledge is by using the concept of benefit sharing. The concept of benefit sharing that used not only emphasize the economic aspect, but also the moral aspect, which is the recognition of the existence of the Traditional Knowledge.
Keywords: Traditional Knowledge; Traditional Medicine; Sanro.

1. INTRODUCTION

Traditional Knowledge is one of the national identities of the Republic of Indonesia[1] and is included in the Intellectual Property Rights regime which must be protected.[2] Traditional Knowledge includes works of art, literature, philosophy, medicine, and primbon texts.[3] Traditional Knowledge has become an important issue[4] since its inception times discussed in the Doha Declaration[5], in the Doha declaration stated that the TRIP's Agreement and the UN Convention must also pay attention to the protection of Traditional Knowledge. In addition, through The World Intellectual Property Organization (WIPO), it is mandated to each WIPO member to discuss and pay significant attention to issues of Intellectual Property Rights (IPR), especially in the field of Genetic Resources, Traditional Knowledge, and Forklore. So that every country that has joined as a member of the World Trade Organization (WTO) and has ratified TRIP's is obliged to adjust the rules relating to IPR. Indonesia as one of the countries that has ratified TRIP's must comply with these rules. The Constitution of 1945 of the Republic of Indonesia Article 28I paragraph (3) clearly states that cultural identity and traditional community rights are respected in line with the development of times and civilization, this

1 Ellieka Sari and Runtung Sitepu, "Legal Protection of Oukup Karo Treatment as a Form of Communal Intellectual Property Rights," in Nternational Conference on Culture Heritage, Education, Sustainable Tourism, and Innovation Technologies (Medan, 2021), 60, https://doi.org/10.5220/0010294600570063.

2 Raden Muhammad Arvy Ilyasa, "Perlindungan Hukum Atas Pengetahuan Tradisional Indonesia Terhadap Praktek Biopiracy Dalam Rezim Hak Kekayaan Intelektual," Jurnal Gema Keadilan 7, no. 3 (2020): 172.

3 Ronald Saija,Teng Berlianty, and Pieter Radjawane "Pengobatan Alternatif Tradisional Untuk Mencegah Penularan Covid-19 Menurut Perspektif Hukum Kekayaan Intelektual Di Kota Ambon," Sasi 27, no. 2 (2021): 172, https://doi.org/10.47268/sasi.v27i2.438.

4 Karlina Sofyarto, "Perlindungan Hukum Hak Kekayaan Intelektual Atas Pengetahuan Tradisional Terhadap Perolehan Manfaat Ekonomi," Kanun Jurnal Ilmu Hukum 20, no. 1 (2018): 149–62, https://doi.org/10.24815/kanun.v20i1.9832.

5 Ira Aryantini Supjan, "Indikasi Geografis Dalam Bidang Obat-Obatan Melalui Sui Generis Intellectual Property System," Jurnal Wawasan Hukum 30, no. 01 (2014): 108.

shows that Indonesia in its constitution has expressed support for the protection of traditional knowledge which is a characteristic of Indonesian culture.

Issues related to the protection of Traditional Knowledge are quite sensitive issues among developing countries such as Indonesia and developed countries. Regulations on Traditional Knowledge are a must for developing countries to provide protection for their cultural identity, but on the other hand for developed countries traditional knowledge is in the public domain[6] which means there is no exclusive ownership of it. On the other hand, Traditional Knowledge has two inherent interests, namely the Importance of Cultural Protection for Indigenous Peoples who have mastered this Knowledge for generations. On the other hand, Traditional Knowledge also has an economic side, where if used commercially[7] Traditional Knowledge will bring benefits. Providing protection for Traditional Knowledge is a must so that foreign parties do not claim Traditional Knowledge in Indonesia. However, regulations regarding the Protection of Traditional Knowledge are still inadequate. Arrangements related to Traditional Knowledge are only found in the Constitution of 1945, there is no law that specifically addresses the form of legal protection for Traditional Knowledge. Even though Indonesia is a country that has traditional knowledge spread in every region,[8] one of which is in South Sulawesi. One of the Traditional Knowledge is Sanro Traditional Medicine. Sanro is a person who practices traditional medicine using the method of incantation and traditional medicinal ingredients made from plants. Traditional medicine carried out by Sanro, especially in South Sulawesi, is used to treat ailments such as stomachaches, fever, headaches, treatment of fussy young children, as well as in pregnant women and even to assist in the birthing process. The practice of Medicine by Sanro has long been carried out by people in South Sulawesi, and until now it is a culture that has been integrated and cannot be separated from the people of South Sulawesi. Protection of Sanro Traditional Medicine is a must to avoid claims from other countries, in addition to maintaining the existence of traditional knowledge in the midst of globalization.[9] Much research has been carried out on the Protection of Traditional Knowledge such as "Legal Protection Against Oukup Karo Treatment as Communal Property"[10], this research discusses the protection of Oukup Karo health care which is Traditional Knowledge that has been used for generations by the Karo people, but this research has not discussed the concept of benefit sharing in Traditional Knowledge. Apart from that, there is also research on "Protection of Traditional Knowledge as a Constitutional Right",[11] this research discusses aspects of regulation of Traditional Knowledge in Indonesia, however, this research does not specifically discuss Traditional Knowledge in certain areas. Currently, there is no research that discusses the Protection of Sanro Traditional Knowledge, and the concept of benefit sharing as protection of Sanro Traditional Knowledge. This research is important considering that Sanro Traditional Knowledge is Traditional Knowledge that has existed for a long time in the South Sulawesi region and has been passed down for generations so that the values of Knowledge in Sanro traditional medicine are important for obtaining legal protection so that Traditional Knowledge is not claimed by foreign parties. This research focuses on discussing forms of legal protection for Sanro Traditional Knowledge, both preventive legal protection and repressive legal protection, besides that

6 Reh Bungana Beru Perangin-angin, Ramsul Nababan, and Parlaungan G. Siahaan, "Perlindungan Pengetahuan Tradisional Sebagai Hak Konstitusional Di Indonesia," Jurnal Konstitusi 17, no. 1 (2020): 180, https://doi.org/10.31078/jk1718.

7 Reh Bungana Beru Perangin-angin, Ramsul Nababan, and Parlaungan G. Siahaan, "Perlindungan Pengetahuan Tradisional Sebagai Hak Konstitusional Di Indonesia," Jurnal Konstitusi 17, no. 1 (2020): 182, https://doi.org/10.31078/jk1718.

8 Darwance Darwance, Yokotani Yokotani, and Wenni Anggita, "Politik Hukum Kewenangan Pemerintah Daerah Dalam Pengaturan Hak Kekayaan Intelektual," Journal of Political Issues 2, no. 2 (2021): 124–34, https://doi.org/10.33019/jpi.v2i2.40.

9 Z Daulay, "Konsep Perlindungan Hukum Terhadap Pengetahuan Tradisional Masyarakat Asli Tentang Obat Di Indonesia," Jurnal Media Hukum 19, no. 2 (2012): 182, http://journal.umy.ac.id/index.php/jmh/article/view/99.

10 Ellieka Sari and Runtung Sitepu, "Legal Protection of Oukup Karo Treatment as a Form of Communal Intellectual Property Rights," in Nternational Conference on Culture Heritage, Education, Sustainable Tourism, and Innovation Technologies (Medan, 2021), 62, https://doi.org/10.5220/0010294600570063.

11 Reh Bungana Beru Perangin-angin, Ramsul Nababan, and Parlaungan G. Siahaan, "Perlindungan Pengetahuan Tradisional Sebagai Hak Konstitusional Di Indonesia," Jurnal Konstitusi 17, no. 1 (2020): 182, https://doi.org/10.31078/jk1718.

this research also discusses the concept of benefit sharing in sanro traditional protection.

2. RESEARCH METHOD

Researchers use a type of normative research with a Statue Approach. The data used in this study are secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. As for the primary legal material, namely statutory regulations related to Traditional Knowledge such as Law Number 30 of 2000 concerning Trade Secrets, Law Number 13 of 2016 concerning Patents, Law Number 5 of 2017 regarding Advancement of Culture, and Government Regulation Number 56 of 2022 concerning Communal Intellectual Property. Secondary legal materials are in the form of articles and news about traditional knowledge, and tertiary legal materials are in the form of legal dictionaries and encyclopedias. The data is then analyzed qualitatively by making comparisons with statutory regulations related to Traditional Knowledge.

3. DISCUSSION

3.1 Sanro Traditional Knowledge

Traditional Medicine in South Sulawesi is usually performed by Sanro or shaman[12], sanro is someone who has spiritual knowledge and performs non-medical treatment[13]. In general, Sanro can be said to be someone who practices medicine who does not have a medical background, but can do treatment using plants.[14] Treatment by Sanro has been carried out for a long time and has become a tradition in South Sulawesi, such as in Sinjai Regency,[15] Bulukumba Regency[16], Pangkep Regency[17], Barru Regency[18], Luwu Utara Regency[19], and Makassar City[20]. Sanro performs treatment using the method of "baca-baca" and traditional medicinal

12 Abdul Hafid, "Pengobatan Tradisional Penyakit 'Nonmedis' Pada Masyarakat Adat Kajang Kabupaten Sulawesi-Selatan," Pangadereng 5, no. 2 (2019): 193.

13 Abdul Hafid, "Pengobatan Tradisional Penyakit 'Nonmedis' Pada Masyarakat Adat Kajang Kabupaten Sulawesi-Selatan," Pangadereng 5, no. 2 (2019): 193.

14 Firzah Aurelia and Abdul Rahman, "Tradisi Ma'Sanro in the Life of the Bugis Community of Bulukumba Regency," International Journal of Social Service and Research 1, no. 4 (2021): 364.

15 Dian Mirza Togobu, "Jurnal Kesehatan Masyarakat MENCARI PENGOBATAN DUKUN (MA ' SANRO) Dian Mirza Togobu Departemen Epidemiologi , Sekolah Tinggi Ilmu Kesehatan Tamalatea Makassar J-Kesmas Jurnal Kesehatan Masyarakat," Jurnal Kesehatan Masyarakat 4, no. 1 (2018): 17.

16 Firzah Aurelia and Abdul Rahman, "Tradisi Ma"' Sanro in the Life of the Bugis Community of Bulukumba Regency," International Journal of Social Service and Research 1, no. 4 (2021): 364.

17 Nawir HK and Rahmatiah HL, "Tradisi Pengobatan Baca-Baca Pada Masyarakat Pulau Balang Caddi Kabupaten Pangkep (Perspektif Hukum Islam)," Rausyan Fikr 16, no. 2 (2022): 347.namely baca-baca treatment, which is treated by ritual and treatment without using rituals. The ritual treatment of baca-baca is carried out to treat diseases caused by spirits and jinn. Meanwhile, the treatment for baca- baca without ritual is treating minor ailments. The reason why the people of Balang Caddi Island still practice traditional Baca-baca for medicine because there are no adequate medical facilities, doctors are only in the city, and the distance from Balang Caddi Island to Pangkep Regency, makes people accustomed to do traditional medicine by baca-baca. Traditional medicine baca-baca in Islamic law as long as it does not contain polytheism. The essence of traditional medicine, such as baca-baca, it's not different from praying or asking Allah for something. for healing, goodness, or benefit for every Muslim who needs treatment.","author":[{"dropping-particle":"","family":"HK","given":"Nawir","non-dropping-particle":"","parse-names":false,"suffix":""},{"dropping-particle":"","family":"HL","given":"Rahmat iah","non-dropping-particle":"","parse-names":false,"suffix":""}],"container-title":"Rausyan Fikr","id":"ITEM-1","issue":"2","issued":{"date-parts":[["2022"]]},"page":"347","title":"TRADISI PENGOBATAN BACA-BACA PADA MASYARAKAT PULAU BALANG CADDI KABUPATEN PANGKEP (PERSPEKTIF HUKUM ISLAM

18 Dloyana Kusumah, "Pengobatan Tradisional Orang Bugis-Makassar," Patanjala : Jurnal Penelitian Sejarah Dan Budaya 9, no. 2 (2017): 245, https://doi.org/10.30959/patanjala.v9i2.22.

19 Muhammad Ashabul Kahfi, Syahruddin, Vilza, et al., "Eksistensi Pengobatan Alternatif Sanro Di Desa Kalotok Luwu Utara, " Community Pengawas Dinamika Sosial 8, no. 2 (2022): 139, http://jurnal.utu.ac.id/jcommunity/article/view/5702/3305.

20 Dloyana Kusumah, "Pengobatan Tradisional Orang Bugis-Makassar," Patanjala : Jurnal Penelitian Sejarah Dan Budaya 9, no. 2 (2017): 245, https://doi.org/10.30959/patanjala.v9i2.22.

herbs. In Indonesian, *baca-baca* can be interpreted as an incantation. This incantation method has been passed down from generation to generation in the sanro family. Traditional medicine by sanro using the incantation method usually uses a healing medium with water[21] and then the water is given to sick people to drink.[22] Water is used as a medium for treatment because water is considered capable of purifying evil things.[23] Apart from using water, other healing methods also carried out by sanro using traditional medicinal ingredients. As in the treatment of hands that are painful and difficult to move, sanro uses a decoction of tobo-tobo leaves (awar-awar leaves) which are rubbed on the aching hands.[24] As for other traditional medicines, such as in North Luwu Regency, in Kalotok village to be precise, Sanro in the treatment usually use plants that exist in the surrounding environment such as using turmeric, cariango, sticks, and leaves of Moringa. In treating sanro, traditional medicinal ingredients are also used, as found in Lontaraq Pabbura[25], one of the ingredients for curing illnesses caused by cold[26] is coriander and black cumin.[27] Basically, Sanro in South Sulawesi performs traditional medicine using objects that are around their environment or easy to find. The knowledge possessed

21 Nawir HK and Rahmatiah HL, "Tradisi Pengobatan Baca-Baca Pada Masyarakat Pulau Balang Caddi Kabupaten Pangkep (Perspektif Hukum Islam)," Rausyan Fikr 16, no. 2 (2022): 347.namely baca-baca treatment, which is treated by ritual and treatment without using rituals. The ritual treatment of baca-baca is carried out to treat diseases caused by spirits and jinn. Meanwhile, the treatment for baca- baca without ritual is treating minor ailments. The reason why the people of Balang Caddi Island still practice traditional Baca-baca for medicine because there are no adequate medical facilities, doctors are only in the city, and the distance from Balang Caddi Island to Pangkep Regency, makes people accustomed to do traditional medicine by baca-baca. Traditional medicine baca-baca in Islamic law as long as it does not contain polytheism. The essence of traditional medicine, such as baca-baca, it's not different from praying or asking Allah for something. for healing, goodness, or benefit for every Muslim who needs treatment.","author":[{"dropping-particle":"","family":"HK","given":"Nawir","non-dropping-particle":"","parse-names":false,"suffix":""},{"dropping-particle":"","family":"HL","given":"Rahmat iah","non-dropping-particle":"","parse-names":false,"suffix":""}],"container-title":"Rausyan Fikr","id":"ITEM-1","issue":"2","issued":{"date-parts":[["2022"]]},"page":"347","title":"TRADISI PENGOBATAN BACA-BACA PADA MASYARAKAT PULAU BALANG CADDI KABUPATEN PANGKEP (PERSPEKTIF HUKUM ISLAM

22 Nawir HK and Rahmatiah HL, "Tradisi Pengobatan Baca-Baca Pada Masyarakat Pulau Balang Caddi Kabupaten Pangkep (Perspektif Hukum Islam)," Rausyan Fikr 16, no. 2 (2022): 347.namely baca-baca treatment, which is treated by ritual and treatment without using rituals. The ritual treatment of baca-baca is carried out to treat diseases caused by spirits and jinn. Meanwhile, the treatment for baca- baca without ritual is treating minor ailments. The reason why the people of Balang Caddi Island still practice traditional Baca-baca for medicine because there are no adequate medical facilities, doctors are only in the city, and the distance from Balang Caddi Island to Pangkep Regency, makes people accustomed to do traditional medicine by baca-baca. Traditional medicine baca-baca in Islamic law as long as it does not contain polytheism. The essence of traditional medicine, such as baca-baca, it's not different from praying or asking Allah for something. for healing, goodness, or benefit for every Muslim who needs treatment.","author":[{"dropping-particle":"","family":"HK","given":"Nawir","non-dropping-particle":"","parse-names":false,"suffix":""},{"dropping-particle":"","family":"HL","given":"Rahmat iah","non-dropping-particle":"","parse-names":false,"suffix":""}],"container-title":"Rausyan Fikr","id":"ITEM-1","issue":"2","issued":{"date-parts":[["2022"]]},"page":"347","title":"TRADISI PENGOBATAN BACA-BACA PADA MASYARAKAT PULAU BALANG CADDI KABUPATEN PANGKEP (PERSPEKTIF HUKUM ISLAM

23 Leonard Y. Andaya,"Water in the Study of Southeast Asia" Kemanusiaan 25 (2018): 26, https://doi.org/10.21315/kajh2018.25.s1.2.it is argued, is multidimensional and complex, and incorporates an understanding of the physical characteristics of water, the transformations it undergoes through human intervention, and the sociocultural meaning that is applied to it by individual human communities. Moreover, water is a generic term that refers to a variety of types (salt, fresh, brackish, land-water

24 Muhammad Irfan Syuhudi, M Yamin Sani, and M Basir Said, "Etnografi Dukun: Studi Antropologi Tentang Praktik Pengobatan Dukun Di Kota Makassar," Balai Penelitian Dan Pengembangan Agama Makassar 5, no. 72 (2015): 9.

25 Lontaraq Pabbura adalah naskah pengobatan tradisional bugis menggunakan bahan fauna dan flora yang bersumber dari alam. Husnul Fahimah Ilyas, "Ramuan Tradisional Dalam Budaya Masyarakat Bugis," Walasuji : Jurnal Sejarah Dan Budaya 7, no. 1 (2020): 140, https://doi.org/10.36869/wjsb.v7i1.92.

26 Husnul Fahimah Ilyas, "Ramuan Tradisional Dalam Budaya Masyarakat Bugis," Walasuji : Jurnal Sejarah Dan Budaya 7, no. 1 (2020): 143, https://doi.org/10.36869/wjsb.v7i1.92.

27 Husnul Fahimah Ilyas, "Ramuan Tradisional Dalam Budaya Masyarakat Bugis," Walasuji : Jurnal Sejarah Dan Budaya 7, no. 1 (2020): 143, https://doi.org/10.36869/wjsb.v7i1.92.

by Sanro in carrying out treatment is something that has been passed down from generation to generation in society which is then passed on to selected people.

3.2 Legal Protection of Traditional Knowledge in Indonesia

All types of traditional knowledge that spread throughout all regions in Indonesia which have their own characteristics, this traditional knowledge deserves legal protection. Legal protection is divided into two, namely preventive legal protection and repressive legal protection. Preventive legal protection means legal protection that is preventive in nature, which aims to prevent disputes from occurring.[28] Provision of protection for Traditional Knowledge as a form of effort to prevent exploitation by developed countries of Traditional Knowledge in Indonesia, including medical knowledge by sanro. Arrangements related to Traditional Knowledge are scattered in several Legislations and some are in the form of Draft Law (RUU). Protection of Traditional Knowledge is part of the Draft Law on Traditional Knowledge and Cultural Expression (RUU PTEBT).[29] In the RUU PTEBT, cultural expressions are the result of intellectual works related to the field of art which have characteristics in the form of cultural heritage which are then maintained or developed by a community within society.[30] While traditional knowledge is the result of intellectual work in the field of science and technology that has traditional characteristics that are guarded, maintained and developed by certain communities. From the two definitions of cultural expression and traditional knowledge, there is a significant difference, cultural expression places more emphasis on works of art while traditional knowledge is more oriented towards knowledge and technology. Traditional medicine, especially sanro, is not a work of art, sanro is traditional knowledge, which means that this knowledge has been around for a long time and has been used for generations in society.

As for Law Number 13 of 2016 concerning Patents, in Article 26 it is stated that Traditional Knowledge is included in the category of invention[31] which if registered, related information must be recognized by an official government institution, and regarding the distribution of results on the registration of inventions originating from Traditional Knowledge is not explained in detail in this article. This of course creates a legal vacuum, moreover the utilization of Traditional Knowledge is permissible, but there are no rules that specifically regulate the distribution of benefits from the utilization of this traditional knowledge. Utilization of Traditional Knowledge is very urgent when it is related to the patent rights regime, because many inventions originating from Traditional Knowledge are misused by third parties[32]. Third parties in this case are foreign parties who are not part of the indigenous people but register inventions of Traditional Knowledge to obtain Patent protection. As happened in Brazil where a foreign party registered a patent for captopril[33] and no economic benefit was given to the Brazilians as the first party to use the drug in traditional medicine.

Traditional knowledge of ownership is communal[34] and it is difficult to find out who owns it individually, so traditional knowledge is classified as prior of art, which means that knowledge is already owned and known

28 R K Sari, "Perlindungan Hukum Terhadap Pengetahuan Tradisional Marosok Sebagai Budaya Masyarakat Di Sumatera Barat," Media Nusantara XVIII, no. 1 (2021): 91, http://103.66.199.204/index.php/MediaNusantara/article/view/1237.

29 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. 20 (2022): 110.

30 Ansori Sinungan,"Rancangan Undang-Undang Perlindungan Pemanfaatan Kekayaan Intelektual Pengetahuan Tradisional Ekspresi Budaya Tradisional" (Jakarta, 2019), www.djpp.depkumham.go.id.

31 Invensi merupakan ide inventor yang diwujudkan dalam suatu hal yang berkaitan dengan pemecahan masalah pada bidang produk atau proses dan teknologi, atau penyempurnaan dan pengembangan produk atau proses. Republik Indonesia, "Undang-Undang Nomor 13 Tahun 2016 Tentang Paten, " Pub. L. No. 13 Tahun 2016, 13 (2016).

32 The World Intellectual Property Organization, "Intellectual Property and Traditional Medical Knowledge" (Geneva, 2015) : 2, https://doi.org/https://doi.org/10.34667/tind.28833.

33 Captopril adalah obat yang digunakan untuk mengobati penyakit hipertensi dan jantung. The World Intellectual Property Organization, "Intellectual Property and Traditional Medical Knowledge" (Geneva, 2015) : 2, https://doi.org/https://doi.org/10.34667/tind.28833.

34 Sulasi Rongiyati, "Hak Kekayaan Intelektual Atas Pengetahuan Tradisional," Negara Hukum : Membangun Hukum Untuk Keadilan Dan Kesejahteraan 2, no. 2 (2011): 214, https://jurnal.dpr.go.id/index.php/hukum/article/view/214.

by many people.[35] As with Traditional Medicine, Sanro is known as Traditional Medicine which is commonly practiced in South Sulawesi. Even though treatment by sanro is known by many people, it does not make this a general matter, because the traditional knowledge possessed by sanro is not obtained carelessly but only certain people, such as in Bulukumba Regency, someone who becomes a sanro is a person who has been given a special assignment by Ammatoa[36]. If you look at its nature, Sanro Traditional Knowledge is only mastered by a few people, this can make Sanro Traditional Knowledge fall under the protection of the Trade Secret regime. Regarding the protection of trade secrets regulated in Law Number 30 of 2000, intellectual property that is part of the Trade Secret category is information in the field of technology and/or business that is not known to the public or the general public, contains economic value because it is intended for business activities, and kept confidential by the owner of the Trade Secret.[37] The emphasis on protecting Trade Secrets is one of its aspects, namely the economic value contained in Confidential Information. However, the interesting thing about Traditional Knowledge, including Sanro Traditional Knowledge, is that the economic aspect is not the dominant aspect. In conducting traditional medicine, Sanro prioritizes aspects of collective life, in the sense that Sanro's Traditional Knowledge is used to help people who are sick because Sanro considers that Traditional Knowledge in the field of medicine is a gift given by God. So the Traditional Knowledge in the field of Medicine that Sanro has is very closely related to religious aspects.

However, the ownership aspect of Traditional Knowledge is important to study, because it relates to the mastery of Traditional Knowledge and the economic benefits attached to said Traditional Knowledge. Even though in Sanro Traditional Medicine the economic aspect is not the most important thing, it is necessary to understand that Traditional Medicine carried out by Sanro contains economic aspects in terms of medicines used by Sanro. The medicines used by Sanro contain economic value especially for pharmaceutical companies, the use of traditional medicines used by Sanro is an attraction for foreign parties. So it is very important to regulate in detail regarding the protection of traditional knowledge because this is related to the effectiveness of legal protection for Traditional Knowledge. There are several important points related to the urgency of protecting Traditional Knowledge, including those related to the principles of justice, conservation, maintenance of traditions and culture, and minimizing the misuse of these things by unauthorized parties. In addition to preventive legal protection, there is also a need for repressive legal protection, which means that the final protection is in the form of imposing sanctions if a dispute occurs or a violation has been committed. In the Law on the Advancement of Culture, one of the object spaces for the promotion of culture is related to Traditional Knowledge. Traditional Knowledge is an object for the promotion of culture that must be protected, and in Article 53 of the Law on the Advancement of Culture it is stated that destroying, vandalizing, or eliminating even causes the facilities and infrastructure for the promotion of culture to not be used will be subject to sanctions in the form of imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah). It is interesting that what is protected in this law is only infrastructure related to objects of cultural promotion, it does not discuss protection if the Traditional Knowledge is claimed by other parties. Sanro Traditional Knowledge cannot be categorized as part of Infrastructure. Infrastructure is related to something tangible, while what Sanro has is an intangible Traditional Knowledge. So that if there are other parties who make claims against Sanro Traditional Knowledge and even register the medicines used by Sanro in carrying out treatment, no sanctions can be given explicitly.

In the Patent Law, the categories of prohibited acts only include the prohibition for everyone to make, use, sell, import, rent, hand over Patents that are either Product Patents or Process Patents. Whereas Traditional Knowledge is not included in the category of Product Patents or Process Patents. The role of the Government is very important to provide protection for Traditional Knowledge, one of the things the Government can do, especially the Regional Government, is by documenting Traditional Knowledge.[38] Documentation in this

35 Daulay, "Konsep Perlindungan Hukum Terhadap Pengetahuan Tradisional Masyarakat Asli Tentang Obat Di Indonesia."

36 Abdul Hafid, "Pengobatan Tradisional Penyakit 'Nonmedis' Pada Masyarakat Adat Kajang Kabupaten Sulawesi-Selatan," Pangadereng 5, no. 2 (2019): 194.

37 Pemerintah Republik Indonesia, "Undang-Undang 30 Tahun 2000 Rahasia Dagang," Pub. L. No. 30 Tahun 2000, 2 (2000).

38 Dwi Tiara, Kurnilasari, Annalisa Yahanan, and Rohani Abdul Rahim, "Indonesia's Traditional Knowledge

case is in the form of recording, recording, or taking pictures, or other steps as part of the documentation of the Traditional Knowledge. This is in accordance with the provisions of Article 16 of the Law on the Advancement of Culture that in the context of the Advancement of Culture, the steps that can be taken are to carry out an inventory of objects for the promotion of culture, which can be done by recording, then carrying out documentation, making determinations, and finally, updating data.[39] Inventory in the form of recording Traditional Knowledge is regulated by Government Regulation (PP) Number 56 of 2022 concerning Communal Intellectual Property. In Article 3 PP 56 of 2022 it is explained that communal intellectual property rights, including traditional knowledge, belong to the state. So the State is obliged to inventory, maintain and maintain Intellectual Property. The obligation to make an inventory is carried out by recording and integrating data. In Article 13 paragraph (2) PP on Communal Intellectual Property it is stated that those who have the authority to carry out records are Ministers, Ministers/heads of Non-Ministry Government Institutions, and/or Regional Governments according to their authority based on statutory regulations, the recording referred to in that paragraph must be based on a request. Applications can be made by the Community of Origin or by the Local Government. Applications related to the protection of Traditional Knowledge as part of Communal Intellectual Property should be focused on the Regional Government, but that does not mean that it places a limit on the Community of Origin to register Traditional Knowledge. This is because there are difficulties in determining the Community of Origin from a Traditional Knowledge. Traditional knowledge is considered to be collective property in society.[40] Moreover, if the Traditional Knowledge is found in several Regencies/Cities in one Province, it is difficult to determine which community has the right to register the Traditional Knowledge. As with Sanro Traditional Knowledge which is spread across South Sulawesi, it is not only found in one Regency/City in South Sulawesi. In addition, for the community, the Traditional Knowledge they possess is considered part of the daily life of the community, so there is no urgency to record or register. Thus, the role of the Regional Government must be proactive in carrying out inventories and outreach regarding the urgency of protecting Traditional Knowledge.

3.3 Benefit Sharing as Legal Protection for Traditional Knowledge

The concept of Benefit-Sharing or what is known as Access and Benefit Sharing (ABS) relates to the sharing of benefits arising from the use of genetic resources.[41] The use of these genetic resources refers to third parties, in this case not the owner of the genetic resources. According to WIPO, ABS refers to what in which genetic resources may be accessed and used, and how the benefits arising from such utilization are shared between the people or countries using the resources (users) and the people or countries that provide them (provider).[42] The concept of Benefit Sharing in the context of international law is stated as an act of providing a

Documentation in Intellectual Property Rights' Perspective," Sriwijaya Law Review 2, no. 1 (2018): 113, https://doi.org/10.28946/slrev.vol2.iss1.114.pp110-130.

39 Undang-Undang Republik Indonesia Nomor 5 Tahun 2017 Tentang Pemajuan Kebudayaan

40 Diah Imaningrum Susanti, "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia," Media Iuris 5, no. 3 (2022): 401–28, https://doi.org/10.20473/mi.v5i3.40174.Geographical Indications, Traditional Knowledge, and Genetic Resources. The aim is to determine the adequacy of Indonesia's positive law in providing legal protection, both defensive and positive, as well as the human rights base in the KIK. The method used is normative juridical, with primary legal material, secondary legal material, which is analyzed using the hermeneutic circumference method, with linguistic and phenomenological analysis to obtain a comprehensive understanding of the protection of the right to KIK within the framework of law and human rights. The research findings show that: the inadequate legal protection for KIK in Indonesia is caused by the duality of nomenclature, recording, and institutional authorities that handle KIK. In addition, the concept of human rights as a claim right, privilege, immunity, power for KIK has not been identified in the KIK rules. A comprehensive and integrated legal protection model is needed for various types of communal intellectual property for the preservation of cultural heritage and national identity within the framework of human rights. Keywords: Business; Communal Intellectual Property Rights; Exploration; Human Rights; Protection. AbstrakArtikel ini mengeksplorasi berbagai aturan yang tersebar dan perlindungannya bagi Hak Kekayaan Intelektual Komunal (KIK

41 Nur Ghenasyarifa et al., "Konsep Access and Benefit Sharing," Bellu Ac Pacis 3, no. 3 (2017): 14–26.

42 Maria Julia Oliva and Olivier Rukundo, "A Guide to Intellectual Property Issues in Access and Benefit-Sharing Agreements," 2018, 1–88.as it is widely known, ABS. It has been produced by the World Intellectual Property

portion of the benefits obtained from the utilization of genetic resources and Traditional Knowledge obtained.[43] Arrangements regarding the concept of Benefit Sharing relating to the Utilization of Traditional Knowledge are contained in Article 12 of the Nagoya Protocol. In Article 12 of the Nagoya Protocol it is explained that Parties who use Traditional Knowledge are required to adapt to the conditions of the local community as owners of the Traditional Knowledge.[44] So that for the Utilization of Traditional Knowledge it must be made clear so that the interests of the Parties both as Owners of Traditional Knowledge and as Users of Traditional Knowledge can be fulfilled, and not only benefit one party. Then the Benefit Sharing Concept is offered in the form of a contract. The contract system for the utilization of Traditional Knowledge is to guarantee the benefit-sharing aspect so that the Community as a party that has rights to Traditional Knowledge is guaranteed their rights including the fulfillment of economic rights. The contract system for Utilization of Traditional Knowledge is used by the State in South Africa, especially by the San Community in the Kalahari Desert. They made a contract with the Scientific and Industrial Research Council of South Africa which is a Pharmaceutical Company in the case of using hoodia as a diet drug which is commonly used in the Kalahari Desert. WIPO has actually provided examples of provisions that can be used or included in a Benefit Sharing contract, namely[45]: (1) the parties, in this case the parties means the providers. The Provider in question is the Owner of Traditional Knowledge, or it could also be in this case both the Central and Regional Governments. In addition, other parties, namely recipients or parties who utilize or use Traditional Knowledge. (2) The scope of the Agreement, in this case it is important to know what will be agreed in the benefit sharing contract, whether it only covers the economic aspect in this case relating to profit sharing or does it include other aspects that are no less important than the economic aspect, namely moral aspect or recognition of Traditional Knowledge.

However, the important point is that when the Utilization of Traditional Knowledge is made in the form of a Contract, there is a User and an Owner. The question then is who is the owner of the Traditional Knowledge. Moreover, in Indonesia ownership of Traditional Knowledge is communal, in the sense that Traditional Knowledge belongs to the local community. Through Government Regulation Number 56 of 2022 concerning Communal Intellectual Property, that the Government carries out an Inventory and Integration of Communal Assets. For Traditional Knowledge, if you want to be listed, there must be administrative requirements that

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Organization (WIPO

43 Djulaeka Djulaeka, "Konsep Benefit Sharing Sebagai Upaya Perlindungan Dan Pemanfaatan Traditional Knowledge Di Indonesia," Rechtidee 9, no. 1 (2015): 1–18, https://doi.org/10.21107/ri.v9i1.411.

44 Secretariat of The Convention on Biological Diversity Montreal, "The Nagoya Protocol on Access To Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization and Its Implementation in Spain," United Nations Environment, vol. 2021, 2021, https://doi.org/10.17103/reei.42.04.the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization and its implementation in Spain","author":[{"dropping-particle":"","family":"Secretariat of The Convention on Biological Diversity Montreal","given":"","non-dropping-particle":"","parse-names":false,"suffix":""}],"container-title":"United Nations Environment","id":"ITEM-1","issue":"42","issued":{"date-parts":[["2021"]]},"title":"The Nagoya Protocol on Access To Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization and Its Implementation in Spain","type":"report","volume":"2021"},"uris":["http://www.mendeley.com/documents/?uuid=4600dc09-e84c-4114-88ab-800d52f55937"]}],"mendeley":{"formattedCitation":"Secretariat of The Convention on Biological Diversity Montreal, "The Nagoya Protocol on Access To Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization and Its Implementation in Spain," United Nations Environment, vol. 2021, 2021, https://doi.org/10.17103/reei.42.04.","plainTextFormattedCitation":"Secretariat of The Convention on Biological Diversity Montreal, "The Nagoya Protocol on Access To Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization and Its Implementation in Spain," United Nations Environment, vol. 2021, 2021, https://doi.org/10.17103/reei.42.04.","previouslyFormattedCitation":"Secretariat of The Convention on Biological Diversity Montreal, "The Nagoya Protocol on Access To Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization and Its Implementation in Spain," United Nations Environment, vol. 2021, 2021, https://doi.org/10.17103/reei.42.04."},"properties":{"noteIndex":44},"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

45 Rachmat Adi Pimantoro, "Implementasi Hukum Kontrak Sebagai Alternatif Benefit Sharing Dari Nilai-Nilai Traditional Knowledge Pada Tempe," Jurnal Hukum & Pembangunan 45, no. 4 (2015): 571, https://doi.org/10.21143/jhp.vol45.no4.61

must be fulfilled, one of which is the inclusion of the Community of Origin of Traditional Knowledge.

The main problem is related to determining the ownership or Community of Origin of the Traditional Knowledge. As an illustration in South Sulawesi, for Traditional Knowledge from 574 Traditional Knowledge data registered at the Communal Intellectual Property Data Center, there are only 14 Traditional Knowledge from South Sulawesi registered,[46] and the majority is Traditional Knowledge in the form of food. There is no registered Traditional Knowledge in the form of Traditional Medicine. In fact, if one looks at the data, in other areas such as the Traditional Medicine of Balam Children from West Sumatra, it has been registered in the Communal Intellectual Property Data Center, the same is the case with the Riau Archipelago which has registered its Traditional Medicine, namely the Bejenjeng Ritual.[47]

There is difficulty in determining the community of origin for traditional knowledge, especially traditional knowledge of sanro in South Sulawesi because sanro are not only located in one regency/city, but are spread all over the province of South Sulawesi. What's more, Sanro does not have a community or in this case an association because Sanro's medicine is still very traditional, and Sanro is not considered a profession. The Sanro have other activities and professions in everyday life. This is the main problem, in fact the Benefit Sharing contract should include the owner (in this case the community of origin) but in the absence of this community of origin, it becomes a question of who will be the parties in this benefit sharing contract. This is where the Regional Government, in this case the Regional Government of South Sulawesi Province, becomes the custodian. By acting as Custodian, the Regional Government can prevent arbitrariness from parties who wish to utilize Traditional Knowledge owned by the community. However, on the other hand the involvement of the Regional Government as a custodian in the possession of Traditional Knowledge does not make the Regional Government have monopoly rights over existing Traditional Knowledge, the benefits must still be given to indigenous people who have guarded this Traditional Knowledge for generations. Benefit in this case refers to the concept of Benefit Sharing, so it is oriented towards economic rights. However, this concept related to the distribution of economic benefits is difficult to apply to Traditional Knowledge, especially sanro Traditional Knowledge due to the absence of an association or an overarching community. So by placing the Government as Custodian in a Benefit Sharing Contract is one of the preventive steps to prevent the arbitrary use of Traditional Knowledge by other parties. However, benefits in Benefit Sharing contracts are not only oriented towards economic benefits but also moral benefits. That the substance of the Benefit Sharing Contract must provide certainty[48] for local communities to remain involved in the management and preservation of this Traditional Knowledge. Through a Benefit Sharing contract, even though the government is involved as Custodian, it is still necessary to acknowledge that the local community is the owner of the Traditional Knowledge.

If it is related to Sanro Traditional Knowledge, recognition of the existence of sanro in a benefit sharing contract is more beneficial for sanro. This is because Traditional Medicine by Sanro in South Sulawesi is not oriented towards economic benefits, but is more concerned with humanist aspects because Traditional Medicine by Sanro is closely related to spiritual aspects. So that the treatment performed by sanro is the actualization of this spirituality. So it is important to continue to provide recognition for the existence of these sanro in benefit sharing contracts compared to the economic aspect.

4. CONCLUSION

One of the requirements in registering traditional knowledge as stipulated in the PP on Communal Intellectual Property is that it must state the community of origin. However, there are difficulties in determining the community of origin for Sanro Traditional Knowledge because Sanro Traditional Knowledge exists not only in one Regency/City but is found in all areas of South Sulawesi Province and Sanro Traditional Knowledge is collectively owned by the community and is considered as part of people's daily lives. Apart from registration

46 Direktorat Jendral Kekayaan Intelektual, "Pusat Data Kekayaan Intelektual Komunal: Pengetahuan Tradisional," 2022, https://kik.dgip.go.id/page/halaman/PT.

47 Kekayaan Intelektual.

48 Yuliana Diah Warsiki Susi Irianti Diah Warsiki Susi Irianti, "Perjanjian Benefit Sharing Sebagai Upaya Perlindungan Dan Pemanfaatan Varietas Tanaman," Rechtidee 12, no. 1 (2017): 1–26, https://doi.org/10.21107/ri.v12i1.2855.

as a form of inventory of Traditional Knowledge, a form of Protection that can be given to Sanro Traditional Knowledge is through a Benefit Sharing contract. However, what is lacking in the Benefit Sharing concept is that if it is only oriented to the economic aspect, traditional knowledge such as sanro traditional knowledge will have difficulty gaining economic benefits. This is because the traditional knowledge of sanro does not yet have a community. Then the Government can act as a custodian in a benefit sharing contract. The existence of the Government as a custodian in a benefit sharing contract needs to prioritize the moral aspect, namely the recognition of the Traditional Knowledge.

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