

STUDY OF THE IMPLICATIONS OF THE GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA NUMBER 56 OF 2022 CONCERNING COMMUNAL INTELLECTUAL PROPERTY IN INDONESIA

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ABSTRACT

Indonesia is a country that has cultural diversity. It is the fruit of the customs expression, values from beliefs, morals, and habits, as well as the people knowledge and skills in adapting to their natural environment and interacting in their social life. The Government Regulation 56 of 2022 concerning Communal Intellectual Property (PP KIK) was born to protect it. In particular, it has mandated the governments to act as inventors, protectors, custodian, also users of communal intellectual property. However, the main issues are: First, is PP KIK sufficient to accommodate legal protection for communal intellectual property? Furthermore, what are the implications of implementing PP KIK for indigenous communities in the future? The method used in this paper is qualitative research with normative juridical methods. From the discussions, it can conclude that PP KIK just has contained provisions related to communal intellectual property inventory mechanism, which prioritizes digital data collection processes, as well as communal intellectual property management, utilization, maintenance mechanisms themselves with the existence of these provisions. However, in the author's opinion, it is not sufficient to accommodate the need to protect communal intellectual property itself, also the implications of implementing PP KIK yet to be able to have the maximum positive impact.

Keywords: Communal Intellectual Property, Intellectual Property Rights, Indonesia, Indigenous Community

A. Introduction

Intellectual Property Rights (IPR) were born because of human creativity, and products resulting from intellectual creativity are attached to two rights: economic and moral rights. These economic rights are often called commercial rights, which will provide economic (financial) benefits for creators/inventors/designers. This economic right rewards the intellectual activity carried out by creators/inventors/designers. The moral rights granted to owners of intellectual property rights are inherent rights of the creator/inventor/designer.

This moral right cannot be removed even if the creator/inventor/designer has passed away. The principle is that every owner of intellectual property rights will enjoy the advantages and benefits of these two rights, namely economic and moral rights.

The development of a knowledge-based economy is a trend of the millennium where intellectual property is not only an aspect of legal protection but has an impact on the macro-economy of a country, among others, that can be used to increase exports of a quality product (through global, national brands), promote technological progress and encourage research and development, carry out product development as a local and national identity and provide awards as well as recognition for one's creativity and innovation. Intellectual works that become assets of a country must be protected and managed effectively. These assets will affect the development of a country, both economic development and technological development.

The economic development of a country is closely related to protecting its Intellectual Property. The more open a country's economic system is, the more Intellectual Property protection will support its economic development.¹ It is related to increasing the economic potential for the national development of a nation. Intellectual Property Protection as a right becomes part of economic activity. In other words, Intellectual Property cannot be separated from economic problems because Intellectual Property is synonymous with commercializing intellectual work. Intellectual Property Protection is an acknowledgment of the property by the state and the general public. Protection of intellectual property rights for a certain period so that the owner of the right has the right to enjoy or exploit the property himself. During the legal protection period, other people can enjoy or use or exploit these rights with the right holders' permission. Intellectual Property Rights are currently a necessary aspect and need attention.

The era of globalization and free competition has opened extensive trade by penetrating national borders. Trade is not only local and national but also international. Violations did not only occur in the local and national sectors but also the international sector. It is a concern for intellectual property rights owners, so taking good care of their rights is essential. The concept of protecting intellectual property rights has resurfaced and has been enforced to ensure legal certainty for intellectual property rights owners. The importance of legal protection for intellectual property rights owners is a central point for a balanced life in trade and harmony in society both locally, nationally, and internationally. Legal protection is a central issue in intellectual property rights, but it is necessary to pay attention to what and whose interests this legal protection is. Some interests clash until it becomes a polemic of the conflict of interests between developed and developing countries.

1 Sinaga, N. A., Pentingnya Perlindungan Hukum Kekayaan Intelektual Bagi Pembangunan Ekonomi Indonesia (*The Importance of Intellectual Property Legal Protection for Indonesia's Economic Development*), (Jurnal Hukum Sasana, 2020, <https://doi.org/10.31599/sasana.v6i2.385>), 144–165, (accessed 21 May 2023)

Indonesia is a country that has an abundant wealth of living and non-living natural resources. Not infrequently, some of them have uniqueness or characteristics that are not found in other places (endemic). However, it is not limited to that; Indonesia also has cultural diversity, which has been maintained for generations and has become its group identity. Cultural diversity is the fruit of the expression of customs, values from beliefs, morals, and habits, as well as the knowledge and skills of the people in adapting to their natural environment and interacting in their social life. This cultural diversity is then maintained and passed on to the next generation, becoming a communal identity.

Some forms of cultural expression include regional languages, dances, traditional clothes, and ceremonies. Local wisdom is in the form of knowledge and skills, including the ability of the community to utilize and mix natural materials into medicines, process food products, and craft products. The local wisdom of the people in adapting to their environment can also be seen in the characteristics of house buildings and the community's traditions in managing their natural environment. However, communal wealth, which has become the identity of local Indonesian people, has been claimed to be the culture of other countries. As is known, in 2009, Malaysia once claimed and patented the *Pendet Dance*² originating from the island of Bali as the original culture of its country. Before that, the *Rasa Sayange Song* was also recognized by Malaysia as a cultural fruit of the Malay family from the Archipelago (Malay Archipelago). They used this song to promote Malaysian tourism entitled *Truly Asia*. This neighboring country has also done the same with batik, *Reog Ponorogo* dance, and *angklung* music.³

A Japanese company has also carried out the case of patenting Indonesian traditional knowledge. This traditional Indonesian medicinal herb was also patented by the Japanese company Shiseido, but then 2002,⁴ Shiseido revoked it.⁵ Not only that, Indonesia's natural products were once recognized as products from foreign countries. Toraja Arabica coffee, grown in Toraja, South Sulawesi, is managed and registered as a Japanese company Key Coffe Co. trademark. It resulted in Toraja Arabica Coffee not being sold internationally except by the Japanese company Key Coffe Co. Besides that, Gayo Coffee,⁶ made from

2 Yohan Rubiyantoro, *Malaysia Klaim Tari Pendet, Indonesia Kirim Nota Protes, (Malaysia Claims Pendet Dance, Indonesia Sends Protest Note)*, <https://nasional.kontan.co.id/news/malaysia-klaim-tari-pendet-indonesia-kirim-nota-protes--2>. (accessed 25 May 2023)

3 *Ibid.*

4 Inayah Rohmah, *Perlindungan Varietas Tanaman dalam Penerapan Paten Bagi Inventor Asing, (Protection of Plant Variety in the Application of Patents for Foreign Inventors)* <https://www.kompasiana.com/inayahrohmah/584e96f3749373375dc894e2/perlindungan-varietas-tanaman-dalam-penerapan-paten-bagi-inventor-asing?page=all>. (accessed 25 May 2023)

5 Tri Destanto, *Hubungan Antara Paten Dan Pengetahuan Tradisional Berdasarkan Dengan UU No. 14 Tahun 2001 Tentang Paten (The Relationship Between Patents And Traditional Knowledge According To Law No. 14 of 2001 concerning Patents)*, May 2023, 1

6 Editor Kompas, *Paten Kopi Gayo Milik Belanda Toraja Milik Jepang (Gayo Coffee Patent Owned by the Netherlands Toraja Owned by Japan)*, <https://nasional.kompas.com/read/2008/05/28/15421243/paten.kopi.gayo.milik.belanda.toraja.milik.jepang>, (accessed 19 May 2023)

one of the best varieties of Arabica coffee beans, only grows in the highlands of Aceh as a trademark of the company Holland Coffe B.V. from the Netherlands, which officially registered and claimed Gayo coffee on April 28, 2010.⁷

Given these cases, the Government of Indonesia has paid particular attention to communal intellectual property in its territory. The government considers Indonesia's cultural diversity and natural wealth in the form of traditional cultural expressions, traditional knowledge, genetic resources, indications of origin, and potential geographical indications are a form of Communal Intellectual Property as the essential capital of national development. The Indonesian government feels the need to inventory, safeguard and maintain communal intellectual property. These considerations underlie the promulgation of Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property as a follow-up to Law Number 28 of 2014 concerning Copyright that has not explicitly regulated communal intellectual property.

The Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property (PP KIK) shows the seriousness of the Indonesian government in responding to polemics in society regarding the protection of cultural diversity, which has been maintained for generations by its groups in particular and the identity of the Indonesian state in general.⁸

The government's role is immense in this PP KIK, from inventorying and managing to protecting and maintaining communal intellectual property. The central and regional governments have an enormous burden to manage from upstream to downstream the collective intellectual property data that will be and has been registered. The first homework that needs to be done at this time by the government is to record how many cultural expressions of indigenous peoples exist in Indonesia, considering there are so many indigenous communities in Indonesia. It, of course, will encounter obstacles when implementing PP KIK.

For the record, in Indonesia, there were 2,161 indigenous communities as of August 9, 2022, of which the majority, or 750 indigenous communities, are in Kalimantan. A total of 649 indigenous communities live in Sulawesi. Then, there are 349 indigenous communities located in Sumatra. There are also 175 indigenous communities in Maluku. A total of 139 indigenous communities are located in Bali and Nusa Tenggara. In Papua, there are 54 indigenous communities. Meanwhile, 45 indigenous communities are located in Java.⁹

7 *Ibid.*

8 It is located in consideration of The Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property.

9 Monavia Ayu Rizaty, *Ada 2.161 Komunitas Adat di Indonesia, Berikut Sebarannya (There are 2,161 Indigenous Communities in Indonesia, Here's Their Distribution)*, <https://dataindonesia.id/varia/detail/ada-2161-komunitas-adat-di-indonesia-berikut-sebarannya>, (accessed on May 7th, 2023)

Seeing this description of conditions, PP KIK is the only basis for the government to manage communal intellectual property. With the rapid development of technology in the last decade and with the constraints previously described, the government's burden will undoubtedly increase unless it formulates other regulations that can support the implementation of PP KIK in a comprehensive and detailed manner. Especially in the current digitalization era, legal provisions that can provide complete protection and legal certainty for indigenous peoples will become very urgent. Moreover, that should be reflected in the government's provision of tangible benefits to the indigenous peoples.

However, in the existing PP KIK, it turns out that there is no fundamental government role in protecting Communal Intellectual Property itself. PP KIK only regulates six matters: Types of Communal Intellectual Property, Inventory of Communal Intellectual Property, Safeguarding and Maintenance of Communal Intellectual Property, Indonesian KIK Information System, Utilization of Communal Intellectual Property, and Funding. Of the six things that are regulated, the rights and obligations of the stakeholders are not described in detail but only prioritize the mechanism for collecting data on communal intellectual property.

In particular, the PP KIK has mandated the Central and Regional Governments to act as inventors, providers of protection, and maintenance of the communal intellectual property, as previously mentioned, including using the joint intellectual property itself. Article 29 mention, which states:

Maintenance of the collective intellectual property by the Minister, ministers/heads of non-ministerial government institutions, and/or Regional Governments as referred to in Article 3 section (2) can be carried out through:

- a. *education;*
- b. *literacy;*
- c. *outreach and promotion; and/or*
- d. *utilization of communal intellectual property, which provides benefits for the Community of Origin.*

However, the PP KIK does not explain in detail what forms of commercial benefits can be obtained by the indigenous communities, especially the benefits derived from the commercial use of communal intellectual property. In addition, it does not contain a mechanism for providing help from commercial use to indigenous communities or the government. PP KIK in terms of utilizing the communal intellectual property just only mentioned in Article 33 section (3):

Using communal intellectual property for commercial purposes must obtain a permit per the provisions of laws and regulations.

And in section (4) states:

The use of communal intellectual property for commercial purposes, as referred to in section (3), shall be carried out by taking into account the agreed benefit sharing under the provisions of the laws and regulations.

Finally, section (5) states:

The forms and procedures for obtaining permits, as referred to in section (3), and the distribution of benefits in section (4) shall be stipulated by the Minister and ministers/ heads of non-ministerial government institutions under their respective powers.

These facts are interesting to discuss; reflecting on these, next, the author will try to analyze and describe more about discussing the application of the Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property and its implications for society. The main issues that need to be discussed are: First question is, Has PP KIK adequately accommodated the need for legal protection for communal intellectual property itself? In addition, the question is what are the implications of implementing PP KIK for indigenous communities in Indonesia in the future?

B. Methodology

This paper's research type is qualitative research using normative juridical methods. Legal research with a normative juridical approach or doctrinal study looks at the purpose of the law, values of justice, analysis of legal rules, legal concepts, and legal norms, and provides an accurate description.

This study uses a statutory approach, namely an approach using legislation and regulations that are carried out by examining a statutory law relating to intellectual property rights.¹⁰The source of legal material used in this study is a combination of primary legal materials consisting of statutes, official records or treatises on making laws and decisions of judges and secondary legal materials in the form of all publications on the law which are not official documents related to intellectual property rights. Publications on law include textbooks, legal dictionaries, and commentaries on court decisions about communal intellectual property.

The collection of legal materials consists of the following 1) the study of statutory regulations is an attempt to examine and understand the statutory rules governing the formulation of the problem in this study. 2) Literature study used to look for conceptions, theories, and opinions related to the formulation of the problem in this study. From the legal material that has been collected, an analysis is carried out by first identifying legal facts and setting aside irrelevant matters to determine the content of the law to be resolved. Second,

10 Peter Mahmud Marzuki, *Penelitian Hukum (Legal Research)*, (Kencana Prenadamedia Group, Jakarta: 2016), 44.

collecting relevant legal materials and including non-legal materials. Third, to study the issues based on the collected legal materials. Fourth, conclude in the form of arguments that answer legal matters. Fifth, provide the ideas that have been built in conclusion. The conclusion is based on the analysis of the main problem.

C. The Implication of the implementation of the Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property (PP KIK)

1. General Introduction of Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property (PP KIK)

Communal intellectual property has the characteristic of being together in the sense that the prioritized profits and interests are the interests of many people. Communal intellectual property comprises traditional knowledge, cultural expressions, and geographical indications. Meanwhile, the personal intellectual property consists of copyrights; patents; brands; industrial design; integrated circuit layout design; trade secrets, and protection of plant varieties. The state's role is strategic in fulfilling cultural rights because the state has the functional completeness to uphold these rights as part of rights on a legal basis.¹¹

Cultural aspects are essential in contributing to the development of communal intellectual property in Indonesia. It is because communal intellectual property is generally based on the culture of Indonesian society. Therefore, the role of the state and society is needed in developing culture in Indonesia so that it can give birth to valuable intellectual property and can become an asset for the Indonesian state. Protection of communal intellectual property must be provided to provide economic benefits to the community and prevent misuse, and protective measures are carried out to respect values, respect, and meet the actual needs of local communities. The purpose of legal protection for intellectual property is intended so that those who have the right can exploit their wealth with a sense of security and comfort. That sense of security and comfort creates a climate that allows the person to work by producing further creations or inventions.¹²

Intellectual property law in Indonesia accommodates private rights and regulates collective or communal intellectual property rights. There are four types of communal intellectual property in Indonesia, namely Traditional Cultural Expressions: Traditional

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- 11 K. Sofyanto, *Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi (Legal Protection of Intellectual Property Rights over Traditional Knowledge for Obtaining Economic Benefits.)*. (Kanun Jurnal Ilmu Hukum, 2018, <https://doi.org/10.24815/kanun.v20i1.9832>), 149–162, (accessed 18 May 2023)
- 12 Atmadja, *Urgensi Perlindungan Hak Kekayaan Intelektual (The Urgency of Protecting Intellectual Property Rights)*, (Lex Journalica, 2015). 13

Knowledge, Genetic Resources, and Geographical Indications. Communal intellectual property in Indonesia, if continuously developed and guaranteed legal protection, will have a very high economic value, undoubtedly encouraging economic growth in Indonesia. It is an excellent opportunity for Indonesia to exploit the potential value of this communal intellectual property.

Many people consider that Communal Intellectual Property in Indonesia is still not sovereign. This opinion was expressed by several other countries voicing their people to register all intellectual property owned. The State of Indonesia also needs to provide a national data center that is integrated and easily accessible to the public. The cultural heritage database is still scattered, making it difficult for the community.¹³ This database is essential to do in the concept of digitizing communal intellectual property in Indonesia. The technological aspect (besides the cultural aspect) is also a dominant factor in developing and protecting Intellectual Property Rights. The rapid development of information technology today has made the world feel small. The Information can be easily and quickly spread to all places of the world. In the circumstances like this, the Indonesian government needs to protect communal intellectual property as part of Intellectual Property Rights, one of which is digitizing communal intellectual property.

This fact is one of the reasons for the Government Regulation of the Republic of Indonesia Number 56 of 2022 Concerning Communal Intellectual Property (PP KIK) existed. PP KIK itself specifically regulates six matters, viz.:¹⁴

1. Types of Communal Intellectual Property
2. Inventory of Communal Intellectual Property
3. Safeguarding and Maintenance of Communal Intellectual Property
4. Indonesian KIK Information System
5. Utilization of Communal Intellectual Property
6. Funding

Communal Intellectual Property in PP KIK includes Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, Indications of Origin, and Potential Geographical Indications.¹⁵ In the general provisions of PP KIK, it has defined each type of Communal Intellectual Property. The general provisions explaining Traditional Cultural Expressions are all forms of expression of copyrighted works, either in the form of objects or intangibles or a combination of both. It shows the existence of a traditional culture held communally

13 R. Adawiyah, *Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal Di Indonesia (Regulation of Intellectual Property Rights in Communal Society in Indonesia)*, 2021. <https://doi.org/10.28946/rpt.v10i1.672>, 10, (accessed 21 May 2023)

14 These matters are completely listed in the six chapters of the Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property, specifically in Chapters III to Chapter VI.

15 Article 4 of PP KIK

and across generations.¹⁶ In addition, what is meant by Traditional Knowledge is all ideas and ideas in society, which contain local values as a result of authentic experiences in interacting with the environment, developed continuously, and passed on to the next generation.¹⁷ The definition of *genetic resources* is genetic material originating from plants, animals, or microorganisms that contain units that function as carriers of hereditary traits that have actual or potential value.¹⁸ Indication of Origin is a characteristic of the origin of goods and/or services not directly related to natural factors protected as signs indicating the correct origin of goods and/or services used in trade.¹⁹ At the same time, Potential Geographical Indications are goods and/or products which, due to geographical and environmental factors including natural factors, human factors, or a combination of these two factors, give a particular reputation to the goods and/or products produced, which have the potential to be protected by geographical indications and has not been registered as a geographical indication.²⁰

Ongoing the definition of the types of communal intellectual property, then PP KIK also regulates the mechanism for inventorying communal intellectual property as a form of legal protection measures for the communal intellectual property itself. In Chapter III, PP KIK explicitly regulates the recording of communal intellectual property and integration of the communal intellectual property data. The provisions of Chapter III state that it is the government, in this case, the Minister, ministers/heads of non-ministerial government agencies, and/or Regional Governments, who have the authority to register communal intellectual property electronically based on an application for the communal intellectual property registration from interested parties.²¹ Whereas those entitled to register are customary law communities and/or local communities that produce, protect, maintain, and/or develop the communal intellectual property communally and across generations, including the supportive community, which in PP KIK is known as the original community.²² In addition to the original community, those who are also allowed to register KIK are local/regional governments where applications are submitted to the Minister or ministers/heads of non-ministerial government agencies.

Furthermore, the Minister, ministers/heads of non-ministerial government agencies, or Local/Regional Governments will review the data and requests and then record them based on the results of the studies that have been made.²³ Furthermore, in Chapter III, it has also been stated that all data that has been registered with the Minister, ministers/heads of non-

16 Article 1 (2) of PP KIK

17 Article 1 (3) of PP KIK

18 Article 1 (4) of PP KIK

19 Article 1 (5) of PP KIK

20 Article 1 (6) of PP KIK

21 Article 13 of PP KIK

22 Article 1 (7) of PP KIK

23 Article 14 and Article 15 of PP KIK

ministerial government agencies, or Regional Governments will be inventoried in a system called the communal intellectual property information system. The government does it as a form of defensive protection for the communal intellectual property itself.²⁴

Chapter III is related to Chapter V, which regulates the communal intellectual property information system. In this chapter, the government, through its apparatus, is authorized to manage the communal intellectual property information system, including recording, updating, and deleting communal intellectual property data contained in the system. The government deleting or updating the system in this chapter is based on the existence of an objection related to the case that KIK is not following the values, meaning, and identity of communal intellectual property and/or social institutions that apply in the Original Community. The community of origin can submit the objection or personally submits it as long as they are still part of the community of origin concerned. If an objection has been submitted and the authorized official has examined it and issued the results of an examination, the authorized official may take steps to delete or update the data in the communal intellectual property information system he manages.

In Chapter IV PP KIK focuses on safeguarding and maintaining communal intellectual property. In PP KIK Ministers, ministers/heads of non-ministerial government agencies or Regional Governments are then required to maintain KIK as referred to in Article 3 section (2) of PP KIK, namely through preventing the exploitation of communal intellectual property that is not following the values, meaning, identity of communal intellectual property, and/or social institutions that apply in the Community of Origin, mediation and/or advocacy on legal issues related to communal intellectual property; and/or diplomacy with other countries. Apart from the government and its institutions, the Community of Origin can also protect its own communal intellectual property by preventing the exploitation of communal intellectual property that is not following the values, meaning, and identity of communal intellectual property and/or the social institutions prevailing in the Community of Origin. In addition to this form of protection, the role of the government through its authorized apparatus is to maintain communal intellectual property itself. Based on the provisions of Article 29 PP KIK Maintenance of communal intellectual property by the Minister, ministers/heads of non-ministerial government agencies, and/or the Regional Government maintains communal intellectual property through the forms of education, literacy, outreach/promotion, and/or utilization of communal intellectual property that provide benefits to the Community of Origin.

Furthermore, in Chapter VI, PP KIK explicitly regulates the utilization of communal intellectual property. In this chapter, it requires that everyone who wants to take advantage

24 Article 27 of PP KIK

of the communal intellectual property must fulfil the following conditions:²⁵

1. mention the origin of the communal intellectual property Origin Community;
2. maintaining the value, meaning, and identity of communal intellectual property; And
3. pay attention to the values that live in the bearer community.

In addition to containing these provisions, in this chapter, PP KIK has also required that in terms of communal intellectual property having sacred, secret, and/or upheld characteristics, the use of communal intellectual property must obtain permission from the Community of Origin. When the utilization is commercial, those wishing to utilize the communal intellectual property must obtain a permit under the applicable statutory provisions. Such commercial use must also consider the agreed benefit sharing under statutory provisions. The forms and procedures for obtaining permits and the subsequent distribution of benefits are determined by the Minister and ministers/heads of non-ministerial government institutions under their respective authorities.

From the general presentation of the chapters in PP KIK, it can be concluded that PP KIK has contained provisions related to the communal intellectual property inventory mechanism, which includes data collection and registration, which prioritizes digital data collection processes, as well as communal intellectual property management and utilization and maintenance mechanisms itself with the existence of these provisions. However, far from perfect, in the author's opinion, it is sufficient to accommodate the need to protect communal intellectual property, which is increasing daily.

2. The Implication of Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property (PP KIK)

Implementing PP KIK is a positive step for Indonesia, especially for indigenous peoples. The legal umbrella that protects intellectual property communal products is the answer to questions regarding the state's role as a protector for indigenous communities who so far feel they have yet to be protected optimally.

With this PP KIK, the government plays an essential role in processing and maintaining KIK in Indonesia. However, this critical role must also have the active support of the people in Indonesia who feel they own their communal intellectual property. The active role of Indonesian society or indigenous communities in the form of awareness about protecting communal intellectual property is crucial. Although in the provisions of PP KIK, the government has a role in facilitating data collection, the community does not just wait. However, it needs to immediately recognize communal intellectual property itself and start supporting the implementation of PP KIK by registering its communal intellectual property.

25 Article 33 of PP KIK

The government recognizes the existence of indigenous peoples and/or local communities in this PP KIK, known as the original community. The recognition of communal intellectual property rights owned by communities of origin by the Indonesian government is apparent in Article 5 PP KIK. It states that national cultural expressions, traditional knowledge, genetic resources, and indications of origin are inclusive moral rights that are carried out by original community who have economic benefits and is valid indefinitely, as well as the right to potential geographical indications. However, the rights to these potential geographic indications have different treatments, in the sense that to obtain such exclusive protection, these rights must be registered in advance based on the applicable laws and regulations.

In order to guarantee the existence of legal protection, as previously mentioned, for the community of origin, they must register as a first step in the inventory of communal intellectual property. With the inventory of communal intellectual property belonging to the communities of origin, the role of the government and the community of origin can be easier to maintain, maintain and process the communal intellectual property itself. However, reaching the awareness of indigenous peoples to register requires more effort from the government. Referring to the provisions of PP KIK, there is no obligation in any article, which requires the community of origin to register their communal intellectual property, but it is only voluntary. It is different from the emergence of the state's obligation under this PP KIK to inventory, safeguard and maintain the communal intellectual property itself.

In the author's opinion, it is indispensable for the government to emphasize further concrete steps to fulfill the data that will be inventoried as communal intellectual property in Indonesia. With so many indigenous communities in Indonesia, almost all of whom, on average, must own one or all of the forms of communal intellectual property required in the PP KIK, the government should, through its instruments, make an inventory directly apart from waiting for the application for registration of the KIK data collection itself. The concept of communal intellectual property itself is a concept of intellectual property law that is still unfamiliar to the Indonesian indigenous people. The Government of Indonesia itself must realize that the culture of traditional society in Indonesia does not recognize the concept of communal intellectual property rights.²⁶ The cultural values of the Indonesian people also do not recognize individual ownership of copyrighted works in the fields of science, literature, and art. Ownership tends to be social/communal, meaning that the family or the customary law community owns it. This situation can be seen in the appreciation of creativity and works of art in traditional societies. Original works of art are never imprinted

26 Martinu Jaya Halawa, etc., *Pelindungan Hukum Masyarakat Adat Terhadap Kekayaan Intelektual Komunal Nias (Legal Protection of Indigenous Peoples Against Communal Intellectual Property of Nias)*, Journal of Education, Humaniora, and Social Sciences (JEHSS) (Vol 5, No. 4, Universitas Medan Area:2023), 3094

with a name or other sign to identify the creator.²⁷ It, of course, has a very negative impact on the implications of PP KIK itself in the future. In the sense that this can certainly work, but to achieve the target of collecting data on communal intellectual property in Indonesia as a whole, it will take a very long time, or even run in place, especially for areas that can still be said to be relatively lagging. It is necessary for legislators also to consider the effectiveness of enforcing a regulation, as well as taking into account the targets to be achieved in the future so that in the future, these provisions are expected to minimize the emergence of polemics that arise in society.

In PP KIK, the government's role in the inventory of communal intellectual property itself is listed in Article 13, paragraph 6, and Article 15 of PP KIK; both articles include the term assessment. This study is one of the sources for recording communal intellectual property data; without any request from the public, the government can immediately study communal intellectual property. In particular, the author highlights the article's sound because it does not regulate the term assessment. It can lead to multiple interpretations, and the government's role in the communal intellectual property of the data collection process must be clarified. The study of the formulation of the article also needs to provide an overview of the obligations of government officials to act actively to record communal intellectual property.

The dark sound of the word "assessment" in the article gives the impression that this PP KIK prefers to position the community as having an active role in submitting applications for registering their communal intellectual property. It, of course, can eventually lead to the result that the collection of data on communal intellectual property in Indonesia as a whole could be better because the nature of the government is more to wait for the active role of the community. In the absence of words implying an obligation for the government to take strategic steps to collect data on communal intellectual property, in the end, the data collection will not occur in its entirety but again depends more on the seriousness of the indigenous peoples who have an interest in an area.

Apart from the data collection matter, another subject that needs to be underlined is the commercial use of communal intellectual property, as stated in Article 33, paragraph (3) and paragraph (4) of PP KIK. As Article 29 of PP KIK requires that the government can carry out the maintenance of intellectual property Communal activities by taking advantage of communal intellectual property by providing benefits to the community of origin, but Article 33 sections (3) and (4) of PP KIK itself does not include details about what form of benefit the origin community gets. In Article 33, sections (3) and (4) only regulates obtaining commercial utilization permits under statutory provisions (section 3), and such utilization

27 Budi, A. R., & Syamsudin, M., *Hak Kekayaan Intelektual dan Budaya Hukum (Intellectual Property Rights and Legal Culture)*. (PT. Raja Grafindo Persada:Jakarta, 2004), 45

is carried out with due regard to the agreed benefit sharing under statutory provisions (section 4).

Looking at these provisions, of course, in the future, it will again create confusion, especially for the communities of origin. Because when referring to this article, those who wish to take advantage of the communal intellectual property of a community must agree in advance regarding the provision of benefits to the community of origin (in this case, the intellectual property registered by the community of origin). Furthermore, apart from that, after an agreement has been made, the government grants utilization permits in accordance with their respective authorities, both from the central government and regional governments. With provisions that do not explain in detail the mechanism for transparently providing benefits, in the end, it will cause legal loopholes to arise, which will harm the community, both those who want to take advantage of them and the community of origin itself as the owner of communal intellectual property.

Apart from that, there is communal intellectual property arising from government studies, and it turns out that if, in the future, there are parties who wish to utilize the communal intellectual property for these assets commercially, then again, here, there will be a legal vacuum that occurs. In the PP KIK itself regarding the results of the assessment of the communal intellectual property by the government, if it wants to be used by other parties, it is not explicitly regulated, namely: regarding the party who uses it must apply for a permit to whom, and regarding what benefits will be provided later and to whom it will be handed over, and finally, who will get benefit from the utilization.

Thus regarding the implications of implementing PP KIK itself, according to the author as a conclusion in the discussion of point 1 earlier, the PP KIK has sufficiently accommodated the needs of indigenous peoples regarding the legal umbrella for their communal intellectual property. However, it could be better, as described in the paragraph discussion of point 2.

So that based on these explanations, in the opinion of the author of PP KIK, this does not yet reflect the existence of legal certainty, especially in the section on communal intellectual property through the review channel, and the second is related to the problem of utilizing the commercial communal intellectual property. The unpreparedness of human resources, especially from the community of origin itself, and the seriousness of the government and its apparatus in the regions will impact the implications of PP KIK itself. So that in the opinion of the author, to provide legal certainty, this PP KIK needs to be reviewed and perfected by taking into more in-depth consideration the interests of indigenous communities and cutting bureaucracy to facilitate the maintenance and utilization of communal intellectual property carried out by the government itself, in order to provide maximum benefit for the community, in this case, the indigenous communities in Indonesia.

However, PP KIK is a product of legislation that should be based on the principle of legal certainty, which the principle of legal certainty is closely related to legal positivism.

The common thread that connects the principle of legal certainty with positivism is the aim of clarifying positive law. The law in a positivistic stream requires “regularity” and “certainty” to support the functioning of the legal system properly and smoothly.²⁸ So that the goal of absolute legal certainty is to be achieved in order to protect the public interest (which also includes personal interests) with the function of being the main engine of upholding justice in society (order), upholding citizens’ trust in the authorities (government), and upholding the authorities’ authority in the eyes of people.²⁹

We must understand that legal positivism creates a concrete law free from abstract conceptions that will create uncertainty. It is in line with the intent and purpose of the principle of legal certainty, which guarantees that justice seekers can use a definite and concrete, and objective law, without the involvement of speculations or subjective views. John Austin said that legal certainty is the ultimate goal of legal positivism, where to achieve legal certainty, it is necessary to separate law from morals to produce a logical, fixed, and closed system (closed logical system).³⁰

In the author’s opinion, the principle of legal certainty is the biological child of positivist reasoning toward law. The purpose of legal positivism itself is to try to create an objective or written law made by the state to create an order for its people. With such a law, it will create what is said to be the principle of legal certainty, in which the community where the law exists is guaranteed that the law regulates what must be done and what must not be done. Therefore, this legal positivism extracts its value to create a clear law into the principle of legal certainty. Thus, the law is not based on mere subjective speculations, which will make it gray, and there is no clarity in it.

Referring to these opinions, PP KIK, as a legal product, should still prioritize the principle of legal certainty in each article. So that by prioritizing this principle, PP KIK will no longer contain a gray area that causes the loss of the essence of legal certainty and can provide comprehensive legal protection for indigenous peoples. With the improvement of PP KIK, of course, in the future, it will positively influence the implications in society.

D. Conclusion

From the discussion above, it can conclude that PP KIK has contained provisions related to the communal intellectual property inventory mechanism, which includes data collection and registration, which prioritizes digital data collection processes, as well as

28 Mirza Satria Buana, *Hubungan Tarik-Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan (Substantial Justice) Dalam Putusan-Putusan Mahkamah Konstltusi (The Relationship of Attraction Between the Principle of Legal Certainty and the Principle of Substantial Justice in Decisions of the Constitutional Court)*, Yogyakarta: Tesis Magister Ilmu Hukum Universitas Islam Indonesia, 2010, 34

29 A. Ridwan Halim, *Evaluasi Kuliah Filsafat Hukum (Evaluation of Legal Philosophy Lectures)*, (Ghalia Indonesia: Jakarta, 1987), 166.

30 Widodo Dwi Putro, *Kritik Terhadap Paradigma Positivisme Hukum (Criticism of the Paradigm of Legal Positivism)*, (Genta Publishing: Yogyakarta) 2011, 11

communal intellectual property management and utilization and maintenance mechanisms itself with the existence of these provisions. However, far from perfect, in the author's opinion, it is sufficient to accommodate the need to protect communal intellectual property, which is increasing daily.

The other conclusion from discussion above also that the implications of the implementation of PP KIK for indigenous communities in Indonesia, if they still use the current form of PP KIK, have not been able to have the maximum positive impact. The PP KIK has not reflected legal certainty, especially in the section on communal intellectual property through the review channel, and the second is related to problems commercial utilization of communal intellectual property. The unpreparedness of human resources, especially from the community of origin itself, and the seriousness of the government and its apparatus in the regions will affect the implications of PP KIK itself. It shows that the interests of indigenous communities have not been fully accommodated in the end, so regulators must consider more deeply the interests of indigenous communities and cut bureaucracy to facilitate the maintenance and utilization of communal intellectual property carried out by the government itself in order to provide maximum benefit for society.

E. Suggestion

Based on the discussion and conclusion above, some suggestions from the discussion will be as follows, firstly, broadly speaking, the author recommends refining PP KIK by prioritizing the meaning of forming this government regulation as a legal product. Furthermore, according to the author, this PP KIK must prioritize the principle of legal certainty in each article. So that by prioritizing this principle, PP KIK will no longer contain a gray area that causes the loss of the essence of legal certainty and can provide comprehensive legal protection for indigenous peoples. With the improvement of PP KIK, of course, in the future, it will positively affect the implications in society.

In particular, PP KIK itself needs to add articles related to the mechanism for the government's emergence of results of communal intellectual property studies ("assessment" clause). Besides that, it is also necessary to add articles that regulate the mechanism when communal intellectual property arising from registration or data collection based on government studies wants to be utilized by other parties. Which, in this case, is not regulated explicitly regarding the first, the party who utilizes must apply for a permit to whom. Second, then what kind of benefits will be provided later? Third, to whom the benefits will be handed over, and fourth, related to who will enjoy the results of utilizing the communal intellectual property.

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