



PROTECTION OF MINANGKABAU'S *RUMAH GADANG* WALL CARVED AS TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSION AS THE INTELLECTUAL PROPERTY OF WEST SUMATRA

Surya Prahara¹, Mayuasti²,

Universitas Bung Hatta Padang¹

Jl. Bagindo Aziz Chan By Pass, Aie Pacah, Padang, Sumatra Barat, 25586

Universitas Nahdlatul Ulama Sumatera Barat²

Jl. S. Parman No. 119A, Ulak Karang Selatan, Padang Utara, Kota Padang, Sumatera Barat,

Email: surya.prahara@bunghatta.ac.id, mayuasti@gmail.com

Abstract

Traditional knowledge and cultural expression (folklore) includes in the scope of an intellectual creation that comes from ideas, thought, or an innovation of group of people in a country. The scope of traditional knowledge can be traditional literature, artistic or scientific creations, shows, innovations, scientific findings, designs, marks and symbols, or undisclosed information. Those refer to the expression of traditional knowledge that is grown continually. One of the examples is the carved of Minangkabau Rumah Gadang's walls that has a story that is inspired by the name of plants, animals, and things in Minangkabau society. Focus of this research is to cover the protection of Intellectual Property Right (HKI) of traditional knowledge on the walls of Minangkabau Rumah Gadang carved. The method of this research is qualitative design. The informants are chosen by purposive sampling. The results find that there is no the specific constitution or regulation that manage the traditional knowledge. The present regulation of the Intellectual Property Right cannot protect and give economic beneficial to the owner of the traditional knowledge. Intellectual Property Right as form of recognition of rights and awards of intellectual work has not been fully applicable to traditional knowledge. This resulted in the utilization of Traditional Knowledge and cultural expression (folklore), especially in the art of engraving the walls of Rumah Gadang by a non-owner of such knowledge, should have more attention by the government. This is necessary so that its existence can be protected and indigenous peoples as owners of Traditional Knowledge and cultural expression (folklore) get benefit from its intellectual property. Especially, when we realize that Traditional Knowledge and cultural expression (folklore) is a source of inspiration for new innovations for researchers to make inventions or develop it.

Keywords: *intellectual property right, protection of traditional knowledge and cultural expression (folklore), Minangkabau carved.*

Introduction

Traditional knowledge and cultural expression (folklore) includes in the intellectual property which comes from ideas, though, and innovations of people in a country. The scopes of this knowledge can be tradition based literature, artistic or academic creations, shows, invention, research findings, marks and symbols, names, or unspeakable information. Meanwhile, tradition based though refers to knowledge systems, creations, cultural

innovations and expressions which have been informed to the generations and grown continually. It is supported by WIPO that explains traditional knowledge consists of 68 artistic and academic literatures, shows, innovations, research findings, designs, marks, names and symbols, undisclosed information, and all innovations and creations that are based on other traditions which are produced by intellectual activity in industrial, scientific, literary or artistic field.

The current issue of traditional knowledge and cultural expression (folklore) is the discussion about the Intellectual Property Right that is produced by Indonesia indigenous people. The problem is the characters of traditional knowledge cultural expression (folklore) that is communal, concrete, and open contrast to the concepts of Intellectual Property Right (IPR). It must be known that the product of the intellectuality of indigenous people is a part of Traditional Knowledge cultural expression (folklore). Hence, the indigenous people think that the knowledge is not a thing that can be owned personally. Meanwhile, based on Trade Related Intellectual Property Right Agreement (TRIP's) the orientation of intellectual property is capitalistic concept. This is the reason why the characteristic of traditional knowledge cannot be accepted by the concept of IPR. Furthermore, it is difficult to find the founder of the knowledge, so the ownership of the knowledge does not belong to an individual but a group of indigenous people.

One of the examples of the traditional knowledge and cultural expression (folklore) in *Minangkabau* that is much discussed about its Intellectual Property Right is carving art. *Minangkabau* carved is used in the walls of *Rumah Gadang*. The carving shapes patterns that explain folklores, and *Minangkabau* life. There are 32 forms that can be craved on the *Rumah Gadang*'s walls. Every pattern has rules such as where it must be put and why it must be put there. For example, there is a pattern called "*Kuciang lalok*" (Sleeping cat). The meaning of this pattern is as warn to not being lazy and be struggle to earn life. This pattern must be put in the top of *Rumah Gadang* that is called *Gonjong* because "a cat usually sleeps in the roof top". There are three kinds of knowledge related with the carving art of *Rumah Gadang*'s walls. They are artistic arts, rituals, and folklores. In Indonesia, traditional knowledge includes in the intellectual creations that are from ideas, though, or innovations of people. Traditional knowledge and cultural expression (folklore) is the identity of Indonesia that can be useful for the economic development and people welfare.

However, there is one question must be answered. Can Indonesian Law protect the traditional knowledge and cultural expression (folklore) especialy of carved art of *Rumah Gadang*'s *Minangkabau* walls? Obviously, Indonesia does not want other countries which have modern skill and advanced technology steal and modify the traditional knowledge and cultural expression (folklore), so it can be recognized as the owner of the knowledge and that culture, and get Intellectual Property Right. To answer the question, this article presents either Indonesian Law can cover the protection of the traditional knowledge and cultural expression (folklore), especially for the knowledge of carving on the *Rumah Gadang*'s *Minangkabau* walls.

The carving art of *Rumah Gadang* is one of arts which is used in building *Rumah Gadang* in *Minangkabau*. the shaping carve is inspired by the nature that is divided into three

types. The first type is the carve that is from plants such as *Aka Barayun, Aka Duo Gagang, Aka Taranang, Bungo Anau, Buah Anau, Bungo Taratai dalam Aie, Daun Puluik-puluik, Daun Bodi jo Kipeh Cino, Kaluak Paku Kacang Balimbiang, Siriah Gadang* dan *Siriah Naiak*. Second, its name is taken from the animal such as *Ayam Mancotok dalam Kandang, Bada Mudiak, Gajah Badorong, Harimau dalam Parangkok, Itiak Pulang Patang, Kuciang lalok, Kijang Balari dalam Ransang* and *Tupai Managun*. Last, the carve which is inspired by things that are used in the daily life such as *Ambun Dewi, Aie Bapesong, Ati-ati, Carano Kanson, Jalo Taserak, Jarektakambang, Jambua Cewek Rang Pitalah, Kaluak Baralun, Lapiah Duo, Limpapeh, Kipeh Cino* and *Sajamba Makan*. Those inspirations become an important element in creating Minangkabau's culture.

Every shape of carve has meaning that is the symbol of Minangkabaunese life. There are 38 shapes of carve that are identified and usually used. For example, one of the shapes is *kaluak paku kacang balimbiang* that is drawn like propagating ferns complete with leaves and flower. It is curved like a circle in line, coincide, interwoven and also connect. Branch or root branch cuddle outward, inward, upward and downward. Traditional knowledge attached to this carving motif is in the form of meaning and folklore, the meaning is fennel plant is a daily food of Minangkabau society, while the folklore depicted is "*Kaluak paku kacang balimbiang, tampuruang lenggang-lenggangkan, baik manurun ka Saruaso, tanam sirieh jo ureknyo, Anak dipangku kamanakan dibimbiang, urang kampuang dipatenggangkan, tenggang nagari jan binaso, tenggang saratojo adatnyo*". The folklore represents the responsibility of a Minangkabau man who has two functions, as the father of his children and as the *mamak* (an uncle) of his nephews and nieces. He must guide and educate his children and nephews / nieces to become a useful and responsible person to the families of the people (tribe) and *nagari* (village).

Besides the meaning of each shape, where the shapes must be put on the *Rumah Gadang's* walls also has traditional knowledge. For example, there is another shape that is called *Kuciang lalok jo saik galamai* (the Sleeping cat and the cut *galamai*). This shape means the laziness of cats. It gives warn to the Minangkabau young generation not to be lazy. They have to work hard to give better life to their families. The shape must be put in *Rumah Gadang's gonjong* (before the top of the roof). Why? It is because cats usually sleep there. The purpose of putting the shape there is that the young man can see the shape from far away, so the always remember the meaning had by the shape.

However, the problem is the extinction of Minangkabau's *Rumah Gadang* carved. It is happened because the small number of *Rumah Gadang* exists. It can be proven by following data gotten from 12 cities in West Sumatera:

Table 1
The Number of *Rumah Gadang* in West Sumatera

Kabupaten Agam (Luhak Agam)		Kabupaten Tanah Datar (Luhak Tanah Datar)		Kabupaten Lima Puluh Kota (Luhak Limopuluah Koto)	
Nama Nagari	Jumlah	Nama Nagari	Jumlah	Nama Nagari	Jumlah
Lasi	6 unit	Pandai Sikek	0 unit	Simalanggang	1 unit

Ampek Angkek	4 unit	Pagaruyung	21 unit	Mudiak	7 unit
Kamang Magek	2 unit	Sungayang	14 unit	Danguang-danguang	3 unit
Sungai Pua	14 unit	Minangkabau	2 unit	Suliki	12 unit

This condition might not be happen if this art is protected and preserved because it is one of traditional knowledge and the expression of Minangkabau's indigenous people. Because of the extinction of the Rumah Gadang's carved, this research aims to investigate some factors of the extinction itself.

There are two theories used to answer the research question. The first theory, also as the grand theory of this research, is Legal Certainty by Radbruch (1932) that is compiled by Leawoods (2000). Legal Certainty is justified protection against the act of arbitrariness which means a person will be able to get something expected under certain circumstances. This theory is used to answer the question about the protection law of the Indonesian traditional knowledge. All legislations that related to the protection law of traditional knowledge are dissected. Moreover, all principles of legal certainty in those legislations are analyzed. The second theory that is used as the applied theory of this research is Legal Benefit proposed by Bentham (2015). The law which is good gives many advantages for the subjects of the law. This theory is used to analyze the result of analysis about the principles of legal certainty in the instruments of law.

Research Method

The method of this research is qualitative in the form of a case study of phenomenology. The informants of this research are penghulu adat (the leader of a tribe), carvers, people who understand about the carving art, culture observers, and tourism departments. The total of the informants is 64 people. An observation and in-depth interview are used to collect the data of this research. The locations of getting the data are Kabupaten Agam, Tanah Datar, and Lima Puluh Kota where the carving art of Rumah Gadang still exist.

Findings and Discussion

1. Factors That Causes The Extinction Of Traditional Knowledge In *Minangkabau's Rumah Gadang* Carved

After collecting and analyzing the data, it is got that there are three factors that causes the extinction of traditional knowledge in *Minangkabau's Rumah Gadang* carved.

a. People's views are changing

The first factors that causes the extinction of Rumah Gadang carved knowledge is the changing of people's views. The people tend to think modernly. This kind of view makes the culture value hard to be protected. The data shows that the Minangkabau people who live today assess their life by the social status. However, long time ago Minangkabau people lived homogeny without considering the social status because they thought that they have same status of Allah's creation. They also had a statement "*duduak samo randah... tagak samo tinggi...*" (There is no discrimination between one and another in the society). However, Minangkabau people today view live by considering education level, job, and other social status. It is supported by Soekanto (2006) says that social status is one of characteristics of modern people. This think makes people care more about their formal educations, and jobs that can place them in

the top of the social status. Hence, the traditional knowledge such as the carved art of Rumah Gadang left behind because it is not as the requirement to get the social status. Another effect of this condition is the number of carvers who transfer the knowledge is very limited. It can be seen from the following table:

Table 2
Custodian's Names Rumah Gadang Carve in Kabupaten Limapuluh Kota

No	Place	Gelar Datuak	Tribe	Note
1	Nagari Mudiak and Danguang-Danguang	Datuak Parpatiah Datuak Panghulu Basa Datuak Marajo Basa Datuak Paduko Indo	Caniago Tanjuang Caniago Caniago	extinct extinct not interested by the people
2	Nagari Tanjuang Pati	Datuak Marajo Datuak rajo Indo Datuak Permato Alam	Pitopang Kutianye Koto	extinct extinct not interested by the people
3	Nagari Simalanggang and koto Baru	Datuak Panghulu Bosa Datuak Indo Datuak Malano Indo Datuak Damuanso	Pitopang Kutianye Pitopang Pitopang	Not interested by people because it is old
4	Nagari Suliki	Datuak Bosa Datuak Malano Datuak Bandaro Sati Datuak Paduko Alam	Pitopang Piliang Melayu Caniago	extinct extinct extinct not interested by the people

The previous table explains that carvers who have ability in producing Minangkabau carves are extinct. It is happened because there is no interest of people to learn this knowledge. They think that it is ancient and cannot help them to raise their social status. On the other hand, the carvers do not have sons or nephews that can be taught Minangkabau carve.

b. *Muatan Lokal* subject is not taught in the formal education

Muatan lokal had been had in formal education as one of subjects that teaches about culture. It is proven by SK Kemendikbud No. 060/U/1993. Tirtaraharja and La Sulo (2005) explains that Muatan Lokal is an education program which it's content and media relate with nature, social, and cultural environment of each local area or province. West Sumatera is one of the provinces that develops the sharpen curriculum of Muatan Lokal. One of the topics is the Natural Culture of Minangkabau or in Bahasa called as Budaya Alam Minangkabau (BAM). BAM tells about meaning of folklores had by Minangkabau culture besides learning how to make Minangkabau carve. Therefore, BAM becomes one of forums to preserve the culture (Agustina, 2007).

Actually, there are four functions of BAM (Satya, 2004). First, it gives a basic knowledge that BAM is as national culture to the students. Second, it builds students' belief that Minangkabau culture is as national culture. Third, it shows how the values of

Minangkabau culture are used in people daily life. Last, it helps students to learn, investigate, preserve, and develop the knowledge of Minangkabau culture as national culture. It is hope that students apply the culture in their life. For example, the students can not only produce Minangkabau carve but also know the story and meaning of the shape that is carved. Indirectly BAM has preserved the traditional knowledge of Minangkabau (Dinas Kebudayaan dan Pendidikan Sumatera Barat, 1997).

However, in 2018, BAM is not taught anymore. It is replaced by another version of Muatan Lokal based on Kurikulum 2013. Kementerian Pendidikan dan Kebudayaan Direktorat Jenderal Pendidikan Dasar dan Menengah (2015), this new version is explaining about art (traditional games, dances, music, batik), workshop (traditional food, craft carving, leather crafts, weaving crafts), physical education, sport and health (*pencak silat, sepak takraw*), languages (traditional language and foreign language), and technology (computer and automotive). The content of this curriculum is tailored to the potential and the uniqueness of the region. Based on the researchers' analysis, there is no content that presents the traditional knowledge in the Handbook of Muatan Lokal for Elementary and Middle School. The content of that book only focuses on physical culture such as traditional food, crafts, dances, and others. Furthermore, the Curriculum of Muatan Lokal that is based on Kurikulum 2013 is not already developed by the government of West Sumatera. Consequently, BAM is disappeared (Agregasi Antara, 2017).

c. The Regulation of Protection of Traditional Knowledge has not been clear

In Indonesia, traditional knowledge is included in an intellectual property which is from ideas, thought, or people's invention of a country. The problem is the traditional knowledge is always connected with Intellectual Property Right (IPR). Meanwhile, the characteristics of the traditional knowledge which are communal, concrete, cash, and open is contrary to the concept of IPR. The traditional knowledge is collective and owned by all indigenous people. It is not owned by an individual. On the other hand, the concept of IPR refers to Trade Related Intellectual Property Rights Agreement (TRIP's) that its orientation is capitalistic concept that is adopted by developed countries. This concept focuses on the concept of economic profit of an individual (Stiglitz, 2007), because of that the system of IPR cannot be implemented for Indonesian Traditional Knowledge which is owned by communal.

Moreover, the indigenous people think that the traditional knowledge is as public right. It means that the people do not object if their products are used, imitated commercially by other people. However, this situation can lead the misappropriation (Sardjono, 2006) that is done by the other side. They modify the traditional knowledge and get the IPR. It makes the original owner of the traditional knowledge incur losses.

Those cases are happen because the regulations of the protection of the traditional knowledge are still weak. Actually, there is an act about national copyright has been had since 1982, Article 10 Number 6. This regulation is continued by Article 10 Act Number 19, 2002 about Copyright (Kusumadara, 2011). Last, it is Article 13 Act of Copyright 2014. However, those acts are not enough to define the IPR explicitly and

cannot protect the traditional knowledge. There is no special law which concerns on traditional knowledge in Indonesia until now.

2. Intellectual Property Right of Minangkabau's Rumah Gadang Carved

Many international organizations have efforts to protect the traditional knowledge and cultural expression (folklore). One of the efforts that can be implemented is to provide protection in the form of Intellectual Property Rights (IPR). It is must to be done because world thinks that traditional knowledge is an important knowledge which is connected with the human life and traditional cultural expressions are part of an ethnic, ethnic and racial identity. However, laws protecting the traditional knowledge and cultural expression (folklore) are always tailored with the concept of IPR that the owner of patent is an individual. This condition is exactly contrast to the concept of the traditional knowledge itself that is communal and non-profit orientation. It is explained by Daulay (2011), if the traditional knowledge is owned by an individual, IPR for the knowledge can be published. Meanwhile, if the traditional knowledge and cultural expression (folklore) is from an indigenous community and as the public domain, the traditional knowledge can be owned by all people in the world.

Minangkabau people think that IPR that is given for the traditional knowledge and traditional knowledge such as Minangkabau carved is public right which has social function, so they do not object if the product of the knowledge used by others. Meanwhile, that concept is not accepted by the concept of IPR and Paten believed by capitalism. According to capitalism concept, the traditional knowledge and cultural expression (folklore) can be owned by an individual. The capitalist concept of IPR is also found in all Indonesian laws which provide protection for IPR It can be interpreted that if the traditional knowledge is not protected by publishing the IPR or Paten, misappropriation will be happen. Misappropriation means the traditional knowledge is used by other people and gives disadvantages to the owner of the traditional knowledge (Sardjono, 2010). Therefore, a law that emphasizes the rules of the owner of the traditional knowledge in Indonesia is needed to solve the problem of misappropriation. Hence, the position of traditional knowledge that is communal in Indonesia is clear.

3. The Provision of Protecting the Traditional Knowledge and Cultural expression (folklore) of Minangkabau's Rumah Gadang Carved

There are some acts that are arranged to protect the traditional knowledge. Those acts relate with Intellectual Property Right. They are a) the National Act of Copyright 1982, b) Article 10, Act Number 6, 1982 about Copyright, c) Article 10, Act Number 19, 2002 about Copyright, d) Article 13, the Act of Copyright 2014 (Kusumadara, 2011). Article 39 of Law No. 28/2014 states that the copyright for traditional cultural expressions is held by the State. The state is obliged to inventory, maintain and include traditional cultural expressions. The use of traditional expression culture must pay attention to the values that live in the carrying community. Article 39 paragraph (4) states that further provisions regarding Copyright held by the State for cultural expressions are regulated by Government regulations. Law No. 5 of 2017, also provides protection for traditional knowledge and traditional cultural expressions such as arts, customs, folk games and

traditional sports (Article 5). Its protection is carried out by means of inventorying objects of cultural advancement through an integrated cultural data collection system, security (Article 22), maintenance (Article 24), rescue (Article 26), publication (Article 28) and development (Article 30).

But copyright related to traditional cultural expressions (Article 39 Paragraph (4) of Law No. 28/2014) that are held by the state has not yet been regulated by the government and this still has the potential for legal uncertainty in the protection of traditional knowledge and regional cultural expressions. The phrase "held by the state" has the potential to eliminate cultural characteristics and identities that symbolize the ethnicity, tribes, race of the owners of traditional knowledge and cultural expression (folklore), that only accentuates the state side. Meanwhile, IPR problem produces the contradictive view between communal and individual ownership. the contents of IPR protect the economic aspect of the traditional knowledge but not the spiritual aspect and cultural identity.

4. Recommendation to Protect the Traditional Knowledge and Expression of Traditional especially Culture of Minangkabau's Rumah Gadang Carved

There are some recommendations given to protect the traditional knowledge and cultural expression (folklore) such as Minangkabau carved. First, concerning to the weaknesses of the acts found, it is needed to rearrange the legislation of IPR by adding new ideas that can gives solution how the traditional knowledge can get Right as the traditional knowledge. Moreover, the *sui generis* legislation system can be implemented as the solution. Defines that *sui generis* refers to the special rules besides the existing rules. It means that the amendment of IPR's articles is needed. The amendment is hoped making the acts can protect the traditional knowledge which has different characters to the others objects of IPR.

Furthermore, the amendment of the act must deal with the role of country to achieve the dream of Indonesian Law. They are:

- a. Protecting the entire nation of Indonesia based on unity;
- b. Bringing the social justice for all the blood of Indonesia based on unity;
- c. Having sovereignty, based on popular and deliberate representation;
- d. Having country that is based on *Ketuhanan Yang Maha Esa* (One Supreme Godhead) on the basis of a just and civilized humanity.

In addition, the formula suggested by The WIPO Intergovernmental Committee on Intellectual Property and Generic Resources, Traditional Knowledge and Folklore can be used to develop *sui generis* law. The formula can be adopted by Indonesia to protect the traditional knowledge such as Minangkabau carved. In adopting the formula, the government needs to consider the condition and national interest of Indonesia.

There are two points that must be included in the *sui generis* act. First, there must be recognition that the indigenous people are the owner of the traditional knowledge. The customary law can be an alternative source to develop people right. Second, the *sui generis* act do not avoid religion norm that is based on a community system that values togetherness.

It is informed that the process of making the acts to protect the traditional knowledge and cultural expression is still in progress developed by Indonesian government. The drafting of the act will be a legal certainty for law enforcement on legal protection of traditional knowledge in Indonesia. Moreover, it gives hope to the indigenous people to get the recognition as the owner of the traditional knowledge. It is accordance with the ideals of law (*idee des recht*), the legal certainty (*rechtssicherheit*), justice (*gerechtigkei*t), and benefit (*zweckmasigjeit*) as well as law enforcement theory by Radbruch in Wantu.

Conclusion

There are three factors of the extinction of Minangkabau traditional knowledge. First, there is a thinking movement of people to think modernly. The Minangkabau people today leave the traditional knowledge because they think that it is old. Moreover, people think that formal education is the primary requirement to get social status and future success. Second, The Natural of Minangkabau Culture, the subject of Muatan Lokal, is not taught anymore in the formal education. In addition, the new version of this curriculum is not already done by the government. Last, the regulations to protect the traditional knowledge are not clear enough.

The current IPR regime goes against the principles that exist in traditional knowledge. The traditional knowledge that comes from indigenous peoples that are communal and is a public domain cannot be in IPR. The solution is that the government needs to update the IP Law and make the *sui generis* law regarding traditional knowledge. In the *sui generis* should clarify explicitly the recognition of local communities as "owners" of traditional knowledge. IPR attached to the traditional knowledge is IPR which is communal and nonprofit oriented, so that can be owned by all mankind.

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