

The Concept of Legal Protection of Intellectual Property Rights of Traditional Jamu Communal Rights in Central Java

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Abstract

This study aims to describe and provide empirical evidence regarding the legal protection of intellectual property rights for traditional herbal medicines based on communal rights in Central Java and to formulate the concept of legal protection for traditional herbal medicines based on communal rights. Theoretical Framework: This study uses the Theory of Legal Protection and the Theory of Defensive Protection to provide solutions to phenomena that occur in the field. It employs a purposive technique in sampling. The empirical concept is still known in legal research. Legal research views law in the scope of non-formal institutions and tries to understand legal behavior (the living law) in the context of social reality, legal protection of traditional herbal medicine, and also in the context of the reality of society that lives in groups and together. The findings of the study explain that Traditional Herbal Medicine Nguter, which is made and produced by the Nguter Local Community consisting of Herbal Medicine Business Actors, the Nguter Herbal Medicine Market, and also the Indonesian Herbal Medicine Cooperative, Kroya District, Cilacap Regency, Mijen District, Semarang City, and enjoyed by consumers in Nguter District, shows that traditional herbal medicine is a concoction that has been produced for generations and used by the Local Community. The existence of herbal medicine has its significance; however, it has not been optimally protected by the law by the State in the perspective of Intellectual Property Rights. The concept offered is legal protection for traditional herbal medicine as traditional knowledge by using the Defensive Protection concept, which is based on the fulfillment of communal rights. In this perspective, protection is achieved by publishing traditional herbal medicine openly, which can be accessed by Patent Examiners in Indonesia and abroad. The name of the publication is the Traditional Medicine Digital Library.

Keywords: Law, Intellectual Property Rights, Traditional Herbal Medicine Communal Rights.

Introduction

Protecting all life in Indonesia means protecting the entire Indonesian nation and all its people. For example, the existence in question includes the protection of humans, wildlife, and Indonesian culture, tribes, languages, and customs (Sudaryanto et al., 2024). The nation's wealth, both tangible and intangible, is the only thing that is protected for the purpose of establishing the Indonesian state government. Indonesia is a nation that has a lot of traditional wealth, thanks to its biodiversity, which includes the diversity of tribes, dialects, customs, and religious beliefs that exist there (Indrawati et al., 2024; Utari et al., 2024). There are around 1,128 different tribes in Indonesia. Indonesia also has more than 300 different regional languages. In addition, there are almost 3,000 typical Indonesian dances. These coexist alongside other art forms such as traditional music, traditional dance, traditional arts, and so on. In addition to all that has been mentioned, there are still other objects and buildings that are remnants of the past, which have very high historical value and must be utilized for national development (Martha Hendrati et al., 2024; Prasetio et al., 2024).

Traditional herbal medicine is defined by the World Health Organization as a range of knowledge, skills, and practices based on conventional theories, beliefs, and experiences that may or may not be used (Hendrati et al., 2024; Sabihaini et al., 2024). Traditional herbal medicine includes options for the prevention, diagnosis, and treatment of physical and mental health.⁵ Traditional herbal medicine from Indonesia is used internationally and domestically, especially by nations whose populations are mainly

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⁵ World Health Organisation, *General Guidelines for Methodologies on Research and Evaluation of Traditional Medicine* (World Health Organisation, 2000).

immigrants from Java and other parts of the archipelago. The countries mentioned above are those where Javanese immigrants have settled, such as Suriname and Malaysia.

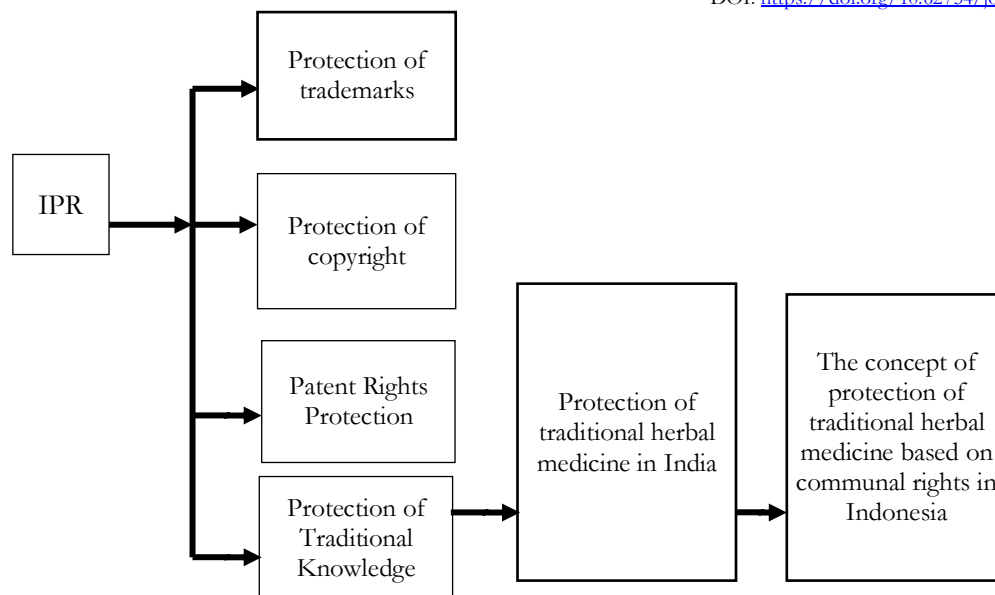
Traditional herbal medicine is included in intellectual property rights based on the description above. However, there are still pros and cons to the ownership of traditional herbal medicine (Sabihaini et al., 2023; Shabbir et al., 2023). Considering the definition of WHO traditional herbal medicine mentioned above, traditional herbal medicine also refers to traditional knowledge, which is a component of intellectual property and is included in the legal system that regulates intellectual property rights. The problem arises from the widespread use of traditional herbal medicine, supported by evidence of its importance and economic value, both by Indonesian society in particular and by people of other nations. This raises the danger of theft and piracy of traditional Indonesian herbal medicine.

The issue of legal protection in this study is complicated by the difficulty of finding the identity of the traditional wisdom of the Indonesian nation that is the same as that of other nations (Asyik et al., 2023; Laily et al., 2023). A large amount of traditional knowledge that is the identity and wealth of the Indonesian nation has actually been patented by foreign parties, as evidenced by the patent for temulawak in the United States and turmeric in Germany, according to the latest report. Another example is the claim that a Japanese company owns the copyright to a form of traditional Indonesian medicine, specifically Javanese medicine. The Japanese Patent Office has issued certificates for 39 patent applications, according to records.

Foreign companies in the US have patented the active ingredient of temulawak to treat liver problems, cancer, and heart issues. This is a component of biopiracy (Eko Prasetio et al., 2023; Prasetyo et al., 2023). Even though the publication states that temulawak is a type of natural Indonesian plant, profit sharing must be limited if it is a component of commercial medicine. Other media also featured the same coverage (Hendrati et al., 2023; Nuswantara et al., 2023). A Bandung scientist has filed a patent in Germany for the silymarin content of turmeric. Previously, the American government had issued a patent for curcumin found in temulawak. There are 45 types of important herbal medicines used in the United States; 14 of them come from Indonesia, including the cancer medicine plant “tapak dara”.

The state, in this case Indonesia, must pay attention to the phenomenon of biopiracy, as previously mentioned (Asyik et al., 2022; Prasetyo et al., 2022). As stated above, the Preamble to the 1945 Constitution indicates that the formation of the Indonesian state government was carried out, among other things, to defend the entire Indonesian nation and all of Indonesia's territory (Kalbuana et al., 2022; Tjaraka et al., 2022). According to the law on the objectives of the state, as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, traditional herbal medicine and traditional knowledge are also part of Indonesian history and must be preserved (Sudaryanto et al., 2022; Utari, Sudaryanto, et al., 2021). The Indonesian government has shown concern for preserving traditional herbal medicine, and this concern extends to developing countries in Asia. Moreover, the use of traditional herbal medicine has grown over the past few decades.

In addition to conventional herbal medicines, there is still much research and legal protection that need to be done. The author provides a more in-depth explanation of traditional medicine and its components. An illustration of the research roadmap is presented in a picture in the form of a Road Map Chart:



Figurer 1. Research Road Map

Literature Review and Theoretical Foundation

Legal Protection Theory

Legal protection is a development of the concept of recognition of human rights. Human rights themselves are part of the concept of a state of law (the rule of law) Which has developed from the 19th century until now. In the development of legal protection, it is interpreted as an effort provided by the state (monopoly) to offer a sense of security, tranquility, and peace for its citizens. Below are the aspects of the theory of legal protection, starting with the definitions or meanings of the concept of legal protection put forward by experts (Aliyyah, Siswomihardjo, et al., 2021; Prasetyo et al., 2021).

Understanding the Concept of Legal Protection

Satjipto Raharjo explains that legal protection is an effort to organize various interests in society so that there are no clashes between those interests and that all rights granted by law can be enjoyed. The great dictionary of the Indonesian language contains the meaning of the word protection, derived from the word *lindung*, which means to protect, prevent, maintain, and fortify (Endarto, Taufiqurrahman, Kurniawan, et al., 2021; Indrawati et al., 2021). The word protection means conservation, maintenance, guard, asylum, and bunker. Indonesia, as a country of law based on Pancasila, must provide legal protection to the community according to the norms contained in Pancasila. Thus, legal protection has two essences, namely recognition and guarantee of human rights (Prasetyo, Aliyyah, Rusdiyanto, Utari, et al., 2021; Utari, Iswoyo, et al., 2021).

Barda Nawawi Arif explains that legal protection means the obligation for society to be given legal protection for the following matters: Society needs protection against anti-social acts that are detrimental and dangerous to society; society needs protection against the dangerous nature of a person; society needs protection against the misuse of sanctions or reactions from law enforcement and members of society in general; and society needs protection against the balance or harmony of various interests and values that are disturbed as a result of crime.

The Meaning of Legal Protection in Intellectual Property Rights

The concept of IP is based on the idea of intellectual work produced by humans that requires a sacrifice of energy, time, and cost. The existence of these sacrifices gives the produced work economic value because of the benefits enjoyed by humans. Economic value can be in the form of money or in the form of services

(Abadi et al., 2021; Endarto, Taufiqurrahman, Suhartono, et al., 2021). Intellectual Property, according to David Bainbridge, is said to be "that area of law which concerns legal rights associated with creative effort or commercial reputation and goodwill. David Bainbridge's opinion confirms that intellectual property is a right stipulated in law relating to creative results that have commercial value due to their reputation (Aliyyah, Prasetyo, et al., 2021; Prasetyo, Aliyyah, Rusdiyanto, Kalbuana, et al., 2021).

Intellectual property is a property right, a right to something that comes from the work of the brain, the work of reason. Intellectual property is the result of the work of human reason; the results of that work are in the form of immaterial objects, or intangible property (Kalbuana, Suryati, et al., 2021; Rusdiyanto et al., 2021). The implementation of IPR cannot be separated from the globalization of world trade, which is marked by international conventions/agreements and the formation of international trade organizations such as the World Trade Organization. In the global order, IPR is seen as a trade problem that has a relationship between three important aspects, namely intellectual property, commercialization, and legal protection. The agenda above is an agreement reached at a meeting in Morocco held on April 15, 1994, where one of the discussions was related to the Trade-Related Aspects of Intellectual Property Rights.

The Meaning of Legal Protection for Traditional Knowledge and Traditional Herbal Medicine

The limitation as a form of protection for traditional knowledge or traditional herbal medicine is the work of traditional communities, which can be in the form of cultural customs, works of art, and technology that have been used from generation to generation since the time of our ancestors and are the shared property of indigenous communities that are protected and preserved.

Traditional herbal medicine is a form of traditional knowledge and, therefore, can be protected by intellectual property. Traditional herbal medicine as traditional knowledge is symbolic of the community that they come from areas that still preserve traditional things (Kalbuana, Prasetyo, et al., 2021; Prasetyo, Aliyyah, Rusdiyanto, Nartasari, et al., 2021a). The definition of traditional knowledge is the knowledge, innovation, and practices of indigenous and local communities that embody traditional lifestyles and also local and original technology (Prasetyo, Aliyyah, Rusdiyanto, Chamariah, et al., 2021; Prasetyo, Aliyyah, Rusdiyanto, Suprapti, et al., 2021). From this definition, according to the substance and relationship of traditional knowledge to biodiversity, traditional knowledge can be divided into two categories: (1). Traditional knowledge related to biodiversity, for example traditional medicines; (2). Traditional knowledge related to art.

Research Methods

Approach Method

In this study, legal research is used as a method of legal approach. Pure legal research does not carelessly separate normative studies from empirical studies. This legal research still uses known empirical ideas (Prasetyo et al., 2021; Prasetyo, Aliyyah, Rusdiyanto, Nartasari, et al., 2021b). Although the empirical aspect is what is studied, in legal research, what is considered empirical can also be a source of living law that regulates research problems (Luwihono et al., 2021; Susanto et al., 2021). Normative issues are also studied in this legal research, considering legislation in the context of formal institutions while trying to understand how it behaves in the context of social reality. In this study, legal protection for traditional herbal medicine is discussed not only from a legal perspective but also from the realities of community life.

Research Steps

The challenges and objectives of this research cannot be separated from the discussion of the research methodology. The following are the stages of this research: First, studying the legal protection of Indonesia for traditional herbal medicine as a form of intellectual property (Prabowo et al., 2020; Rusdiyanto, Karman, et al., 2020). Legal research related to traditional herbal medicine under domestic and international law is thoroughly examined in this study (Rusdiyanto, Hidayat, et al., 2020).

The second stage is to conduct field research, namely to study the reality of the use of traditional herbal medicine in Indonesia, especially in Semarang Regency, Cilacap Regency, and Sukoharjo Regency, where it is practiced. To reach a conclusion, the third stage involves conducting an in-depth analysis and review of the data that has been collected by the researchers.

Data Types

In this study, primary and secondary data sources were used (Juanamasta et al., 2019; Rusdiyanto, Agustia, et al., 2020).

- *Primary Data*

Results of direct observations and interviews with resource persons from business actors in Semarang District, Cilacap Regency, and Sukoharjo Regency.

- *Secondary Data*

Data obtained through legislation, books related to traditional herbal medicine, and documents in the form of literature can support this research.

Research Location

Considering the problems and objectives of this study, namely legal protection for traditional herbal medicine in Indonesia, the author selected the research location based on purposive sampling in Semarang District, Cilacap Regency, and Sukoharjo Regency. The sampling is representative of traditional herbal medicine business actors in Nguter District. The research locations are Semarang District, Cilacap Regency, and Sukoharjo Regency.

Data Collection Technique

According to the legal research methodology, secondary data is divided into primary, secondary, and tertiary materials to address the challenges and objectives of the research. Through observation and conversation with informants, primary data is collected. Legislation, on the other hand, is a physical form of secondary data, consisting of primary, secondary, and tertiary legal resources.

Relevant legislation is a combination of domestic national laws and regulations that also apply internationally. In addition to legislation, secondary legal materials are collected in the form of books, journals, and other sources related to the problems and objectives of this research to be processed and analyzed. Literature and documentary research are used to collect data for this investigation. To gather information in the form of scientific publications needed as a general reference in the scope of compiling and explaining concepts and selecting acceptable theories, a literature survey is conducted. To find a theory or theoretical framework that serves as the starting point in articulating the relationship between law and social sciences with the materials collected, secondary legal sources are gathered from books and journals as well as research findings.

Data Analysis Techniques

Analysis follows the collection and organization of all legal materials. Then, conclusions are drawn from the legal materials that have been processed and presented as research findings. In addition, content analysis techniques are used to streamline and focus the normative examination of research findings. All legal materials in the form of documents collected during the study were analyzed using this technique. The content analysis approach is used to examine the content of all legal materials in the form of legal documents. The systems analysis approach is also applied. The systems analysis method refers to a systems-based legal reasoning approach. The system process begins by evaluating instrumental input and environmental input before moving on to the process, output, and results.

Research Results and Discussion

Traditional Herbal Medicine and Local Community Nguter, Kroya, Mijen

The Nguter community understands that the traditional herbal medicine there is a product that has been passed down from generation to generation. The knowledge obtained does not automatically arise from their creation, such as the beras kencur herbal medicine, which has been passed down from generation to generation. Wiwin, as the third generation of the traditional herbal medicine business, feels that the knowledge she has is not from her own experience but from her mother. Her mother taught her about herbal medicine. The learning process was carried out by Melu (participating) and paying close attention so that Wiwin knew for sure the manufacturing process. The general manufacturing process.

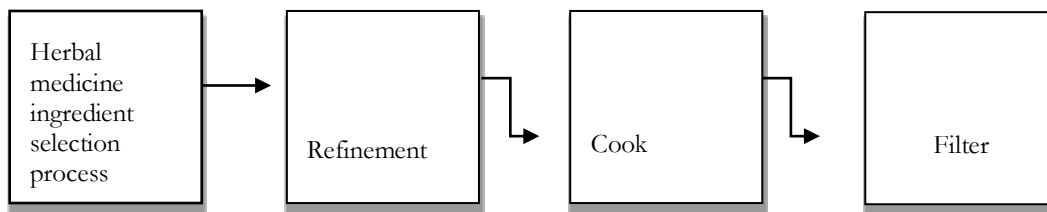


Figure 2. Process Chart for Making Jamu Gendong

They realize that the process of making herbal medicine and the results or products of herbal medicine are the work of their ancestors that they must maintain and preserve. The good work has economic value, moral value, inclusive rights, held by the source community, and eternal protection over time.

Table 1. List Of Communal Rights Existing in the Nguter, Kroya, Mijen Herbal Communities

Communal Rights	Explanation
Economic Rights or Economic Value	Traditional herbal medicine has a selling value
Moral Rights	Traditional herbal medicine is attached to the community that makes it.
Inclusive rights	Openness
Sourced from Community/Communal	That the herbal medicine is from the community
Eternal protection	

The Concept of Legal Protection of Intellectual Property Rights Carried Out by Traditional Herbal Medicine Business Actors in Central Java

Indigenous people and local communities have their own characteristics in determining how to treat or maintain health for themselves and their families. Treatment for local communities can be closely related to mystical and divine beliefs, so it is not surprising that in Javanese society, the term Jamu is known, which stands for Djampi, meaning Tombo (medicine), and Usodo, meaning prayer. The characteristics of Javanese society in general and the community in Nguter District include the belief that herbal medicine has an important role in healing and maintaining health.

First, those who are 70 years old and still make herbal medicine believe that herbal medicine has magical effects, such as herbal medicine made from bidara leaves and other leaves. Second, those who are in their 50s are rational and have been influenced by religious teachings, so they do not one hundred percent agree that traditional herbal medicine has magical value; they argue that herbal medicine only has health value, namely for prevention and healing. Third, those who are in their 30s are very rational, and they see the logical aspects of traditional herbal medicine in Nguter.

The Nguter community, which cares about traditional herbal medicine, especially herbal powder and herbal medicine carrying, has carried out activities that can be classified into two categories. The first is making herbal medicine carrying locally in Nguter or around the Nguter sub-district, while the second is traveling throughout Indonesia to sell herbal medicine carrying.

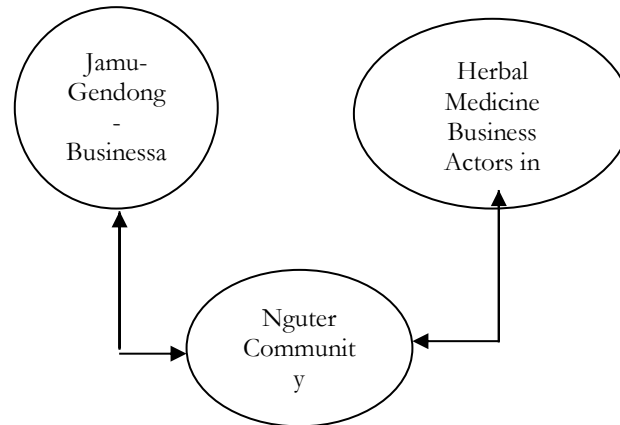


Figure 3. Nguter People Who Sell Herbal Medicine Locally And Abroad

Local Community of Traditional Herbal Medicine Nguter, Kroya, Mijen as the Founder of Communal Rights

A community is a group of people who share a territory and engage in different but related aspects of their livelihoods—such as managing natural resources, producing knowledge and culture, and developing technologies and productive practices. Since this definition can be applied to a variety of sizes (Is a city a community? Is the sum of all the people inhabiting a watershed a community?), it can be further specified that the members of a “local community” are people who may have direct face-to-face encounters and/or mutual influences in their daily lives. In this sense, a rural village, a transhumance clan, or the inhabitants of an urban neighborhood may be considered a “local community,” but not all the inhabitants of a district, a city area, or even a rural town. Local communities may be permanently settled or mobile.

The local community is defined as a group of interacting people who live in the same location. The word is often used to refer to a group organized around common values and associated with social cohesion in a shared geographic location, usually in a social unit larger than a household. The word can also refer to a national community or a global community. The word “community” comes from the Old French *communauté*, which is derived from the Latin *communitas* (*cum*, “with/together” + *munus*, “gift”), a broad term for an organized fellowship or society.

First, the Nguter Herbal Medicine Market; second, herbal medicine business actors and MSMEs; third, the Indonesian Herbal Medicine Cooperative; fourth, the local government.

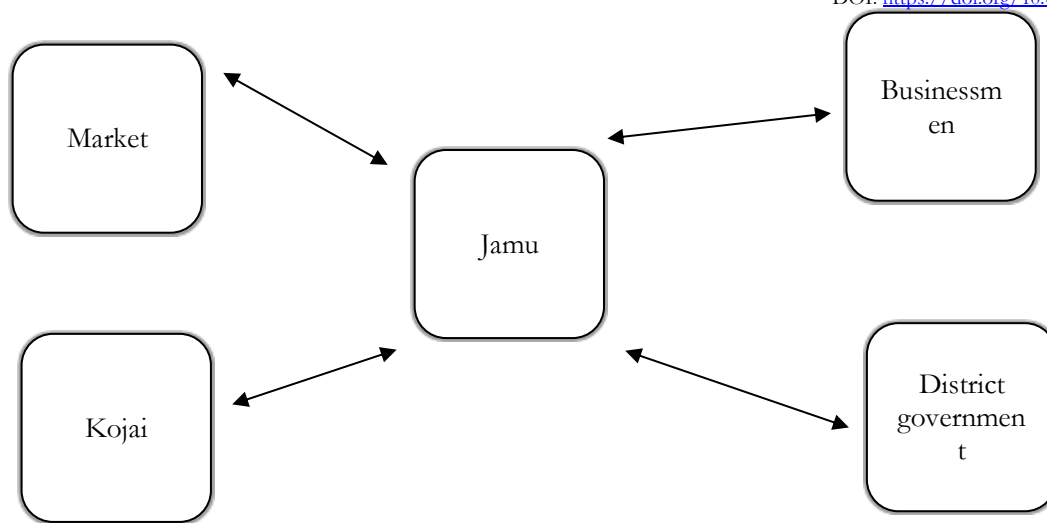


Figure 4. The Herbal Medicine Community Carries Nguter, Kroya, Mijen

First, Economic Rights; Second, Sustainability Rights; Third, Moral Rights; Fourth, Solidarity Rights. The local herbal medicine community in Nguter has built unwritten legal relations such as the Right to Solidarity between fellow herbal medicine business actors, where they provide assistance and help to each other if there are difficulties. Kojai, as an entity that moves to provide support to herbal medicine business actors in Nguter, positions itself as a protector and also maintains the sustainability of herbal medicine. It is important that Kojai continues to receive recognition from all interest groups in the local herbal medicine community in Nguter.

Recognition of the local community of Nguter, Kroya, Mijen, for their Traditional Herbal Medicine and Communal Rights.

The existence of traditional herbal medicine in Nguter District, Sukoharjo Regency, is a product that has existed for generations and is managed and preserved by entities that continue to grow and develop. The sustainability and continuity from year to year show that its existence is recognized by the community, and from upstream to downstream, it is carried out well by the local traditional herbal medicine community in Nguter District.

Recognition of the local community of Dinguter, consisting of Nguter market, traditional herbal medicine business actors, and the Indonesian herbal medicine cooperative or KOJAI, in the context of being important to do, can be done on a district, provincial, and national scale. Recognition of this local community will provide a guarantee of rights that can be obtained by the local community to develop and maintain the existence of traditional herbal medicine in Nguter District today and in the future.

Understanding of the concept of intellectual property rights has developed in dimensions that are not only individual or private but have also shifted to an understanding of rights that are communal or shared in nature.

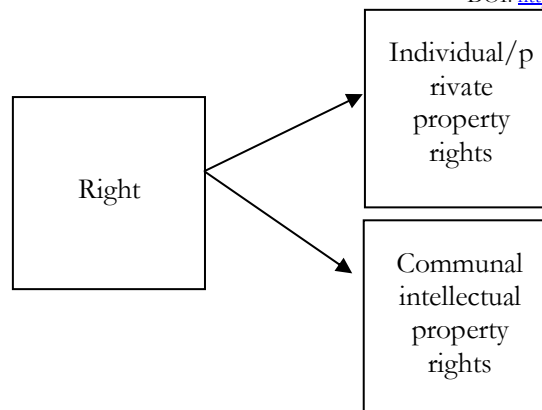


Figure 5. Division Of Intellectual Property Rights

Traditional Herbal Medicine of Nguter, Kroya, and Mijen as Traditional Knowledge

Preservation and protection of traditional herbal medicine are very important for developing countries; this is a fundamental aspect of protecting intangible intellectual works, and it can be a guarantee of life for developing countries in the future. The loss of traditional herbal medicine as part of Indonesia's intangible heritage will be a tragedy for the people, both indigenous tribes and local communities, who truly need traditional herbal medicine as an inseparable part of their lives. Indonesian people, both urban and rural communities, need traditional herbal medicine for their health needs.

Traditional herbal medicine in Nguter that currently exists has been passed down from generation to generation, developed, grown, and produced for the sake of economic interests, as well as socio-cultural interests and preservation interests, as part of Traditional Knowledge. Traditional Knowledge is a scope of creative, informative, and know-how expressions that have special characteristics capable of identifying certain social units of society..

The tradition of traditional herbal medicine in Nguter District has actually existed and grown from generation to generation, carried out orally. Traditional Nguter herbal medicine also has an economic value that continues to grow throughout Indonesia. If we look at this, we can also see how the development and protection of traditional medicine in China works. Traditional knowledge of Chinese medicine refers to knowledge about health and hygiene that is based on Chinese tradition. It is transmitted from generation to generation but continues to develop. It has actual or potential commercial value and includes all innovations and creations resulting from intellectual activity in this field.

Traditional knowledge of traditional herbal medicine can be preserved and expressed in many ways, such as by establishing herbal medicine villages, installing herbal medicine statues, migrating in order to sell herbal medicine in distant places, and through the existence of local entities called kojai or Indonesian herbal medicine cooperatives, as well as herbal medicine cafes and herbal medicine markets. Social relations between traditional herbal medicine stakeholders in Nguter are still going well to this day; they are still producing, selling, socializing, and also demonstrating their existence as a preservation of Nguter herbal medicine culture.

Local Community Nguter, Kroya, Mijen, As A Protocol For Preserving And Maintaining Traditional Herbal Medicine Based On Communal Rights.

Protection is any form of effort to protect Traditional Knowledge and/or Traditional Cultural Expressions from commercial use carried out without permission. Custodians of Traditional Knowledge and Traditional Cultural Expressions are local communities or indigenous peoples who maintain and develop Traditional Knowledge and Traditional Cultural Expressions in a traditional and communal manner.

Intellectual Property Rights in the Protection of Traditional Herbal Medicine Based on Communal Rights

The current growing development of Indonesia requires all aspects to be maximized, both increasing human resources and natural resources. Indonesia, which is an archipelagic country, has abundant natural resources, both renewable and non-renewable. These abundant natural resources must be utilized optimally for the benefit of the Indonesian nation. One of the abundant natural resources is medicinal plants, which are spread throughout Indonesia. Existing medicinal plants have long been processed into potions that the Javanese people call Jamu. For considerations of justice; conservation efforts; maintaining traditional culture and life practices; preventing confiscation by unauthorized parties of components of traditional knowledge; and developing the use and interests of traditional knowledge.

Conclusion

Based on these findings, it can be concluded that Nguter Traditional Herbal Medicine, made and produced by the Nguter Local Community consisting of Herbal Medicine Business Actors, Nguter Herbal Medicine Market, and the Indonesian Herbal Medicine Cooperative (Kojai), and enjoyed by consumers in Nguter District, shows that traditional herbal medicine is a concoction that has been produced and used by the Local Community for generations. The existence of herbal medicine is acknowledged; however, it has not been optimally protected by the State from the perspective of Intellectual Property Rights. Second, the concept offered is legal protection for traditional herbal medicine as traditional knowledge, using the Defensive Protection concept based on the fulfillment of communal rights. In this perspective, protection is done by publishing traditional herbal medicine openly and making it accessible to Patent Examiners in Indonesia and abroad. The name of the publication is Traditional Medicine Digital Library.

Implications of Research Results

The findings of this study are supported by legal theory related to the legal protection of traditional herbal medicine through intellectual property based on communal rights and the IPR Law. The findings of this study can serve as a policy for regulating the legal protection of traditional herbal medicine based on communal rights in the IPR Law. The findings of this study can also be a policy tool for law enforcers in enforcing the law on violations of traditional herbal medicine. Additionally, the findings of this study serve as a reference for the development of legal science in general and for advancements in the protection of traditional herbal medicine in Indonesia, especially in the context of Intellectual Property Rights.

Research Limitations

This study has limitations that cannot be avoided. The disclosure of limitations aims to make this study understandable with interpretations that are not misleading. In addition, the disclosure of limitations also aims to enable further research to fill the gap that is the limitation of this study. Considering the problems and objectives of this study, which focused on legal protection for traditional herbal medicine in Indonesia and is very broad, the author conducted a selection of research locations based on purposive sampling in Central Java. The sampling is representative of traditional herbal medicine business actors, who are numerous in Indonesia. The research location is Nguter Village, Nguter District, Sukoharjo Regency.

Recommendation

As stated in the conclusion above, legal protection for traditional herbal medicine is sufficient, including legal protection for traditional knowledge in Indonesia. However, the forms and models of legal protection still require more concrete steps from the government as a manifestation of all Indonesian people in providing protection for traditional herbal medicine, as well as for traditional knowledge based on communal rights.

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