



## Legal Protection Toward Balinese *Arak* as Intangible Cultural Heritage

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### Abstract

The purpose of this study is to determine the regulation of traditional drinks as intangible cultural heritage and to analyze the protection of Balinese Arak as one of the traditional knowledge that is used commercially in the context of intangible cultural heritage. This article uses normative legal research with statute, analytical, and conceptual approaches. The results showed that the regulation of traditional drinks as intangible cultural heritage, specifically traditional knowledge, is regulated in several laws and regulations such as the Convention for the Safeguarding of the Intangible Cultural Heritage, Law No. 5 of 2017 on Advancement of Culture, Bali Regional Regulation Number 4 of 2020 on Strengthening and Promotion of Balinese Culture as well as Bali Governor Regulation Number 1 of 2020 on the Management of Balinese Fermented and/or Distilled Drink. Although IHC is for preservation, however, it can be interpreted that Law No. 5 of 2017 on Advancement of Culture is more than just preservation as it already regulates in general the commercialization of the object of cultural advancement. The protection of Balinese Arak as one of the traditional knowledge that is used commercially is protected under Articles 37 and 38 of Law No. 5 of 2017 on Advancement of Culture where the Indonesian Government gives permission to big industry and/or foreign parties who want to take advantage of Indonesian cultural advancement objects on the condition that they must meet the principle of benefit sharing as a form of protection.

## I. Introduction

Bali is a place that have many of cultural diversity. This diversity of culture opens the opportunity for economic income, especially in cultural tourism. Apart from being economic support, traditional cultural expression also has benefits for preserving a culture that has been passed down for generations. This attraction is what makes Bali one of the most popular destinations abroad. One of the local cultures that can be the source of income in tourism is Balinese *Arak*, an alcoholic traditional Balinese drink. *Arak Bali* also can be called Balinese *Arak* or Balinese wine. Balinese *Arak* is one of the ancestral heritages from generation to generation that is still worthy of preservation. Apart from

being a traditional drink, Balinese *Arak* has several other benefits, namely as a medicine and as a means of praying for Hinduism which is commonly called *arak tabuh*.<sup>1</sup>

Balinese *Arak* as a traditional alcoholic beverage is a sensitive issue and tends to be controversial, regardless of traditional or non-traditional, is included in the category of product that is restricted in circulation, but in terms of intellectual property rights (IPR) Balinese *Arak* is one of the cultural heritages that should be protected, because *Arak Bali* is a traditional distilled drink typical of Bali as a local commodity of Balinese people who have existed for generations. Balinese *Arak* is traditionally produced and the consumption of Balinese *Arak* becomes an inseparable part of Balinese culture, especially in religious ceremonies that have a special role as a means of upakara "tetabuhan". Balinese *Arak* should be protected and utilized to support the implementation of traditional ceremonies and for sustainable cultural-based economic utilization of the people in accordance with the Bali development vision "Nangun Sat Kerthi Loka Bali" through the universal development pattern planning towards a new era Bali.

Factually, IPR is a system of providing legal protection for intellectual works that cover a wide range, from traditional knowledge to computer programs in today's digital business era. IPR is also the right to enjoy the results of human intellectual creativity economically due to the potential for economic benefits.<sup>2</sup> IPR are very important to obtain protection, this is because IPR are rights arising from property created by human creativity and intellectual thinking. Human beings are born with creation and character so that there is creativity in humans that is able to give birth to intellectual works.<sup>3</sup> The initiative in the IPR system departs from an idea of a reward system given by the state to inventors who contribute to producing high-value findings for society. The point is to give commensurate awards to individuals who have successfully produced a work.<sup>4</sup>

These intellectual works have economic value and are beneficial to human life in increasing wealth. Indonesia in ancient times did not recognize the protection of intellectual property. It has its roots in developed countries that have statutory arrangements related to intellectual property rights.<sup>5</sup> In its development, there are several kinds of intellectual property rights in the world that have been agreed upon by the World Trade Organization (WTO) which have been accommodated in The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which

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<sup>1</sup> I Made Wimas Candranegara, I Nyoman Mangku Suryana, and Ni Luh Sephia Adnyani Putri, "Arak Bali: Between Culture and Economic Recovery in Realizing the Vision of Nangun Sat Kerthi Loka Bali Based on Local Wisdom," in *2nd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2021)* (Atlantis Press, 2021), 186–89.

<sup>2</sup> Sigit Nugroho, "Protection of Intellectual Property Rights in Efforts to Improve Economic Development in the Asean Free Market Era," *Rule of Law: Journal of Legal Research* 24, no. 2 (2015): 164–78.

<sup>3</sup> Ni Ketut Supasti Dharmawan, *Harmonization of Indonesian Intellectual Property Law* (Denpasar: Swasta Nulus, 2018).

<sup>4</sup> Sylvana Murni D Hutabarat, "The Development and Protection of Traditional Knowledge and Traditional Cultural Expressions Reviewed From the Perspective of Intellectual Property Rights," *Juridical Journal* 2, no. 2 (2017): 202–19.

<sup>5</sup> Dewa Ayu Dian Sawitri and Ni Ketut Supasti Dharmawan, "Protection of The Transformation of Lontar Copyright Works in the Form of Digitization," *Acta Comitatus: Journal of Notarial Law* 5, no. 2 (2020): 298–308.

includes regulations, norms and standards for IP protection, including copyright, as well as other rights such as geographic indication, patents, trademarks, industrial design, and includes plant variety protection, layout design of integrated circuit, protection of undisclosed information and control of anti-competitive practices in contractual licences. Balinese *Arak* included in the Traditional Cultural Expression (TCE) regime which is a cultural heritage and wealth belonging to traditional communities (communally owned) which has long been grown in traditional societies and developed for generations and is now accommodated for protection and of course has met the qualifications to be protected as part of communally owned intellectual property. IPR in the traditional knowledge regime and TCE is not regulated in a special law but the work can be given protection under the Law Number 5 of 2017 about Advancement of Culture.

Balinese *Arak* as Balinese traditional wine is designated as one of the hereditary heritages used for religious ceremonies as well as for consumption and trade has actually been designated as one of the Intangible Cultural Heritage (ICH) in the category of traditional craft proficiency (traditional knowledge) through the Decree of the Minister of Education, Culture, Research, and Technology of the Republic of Indonesia Number 414/P/2022 concerning the Determination of Indonesia ICH in 2022.

Although it has been designated as one of the IHC loopholes of the legal system of IPR against works of TCE, traditional societies have not been able to expect much from the legal regime to provide a device that can protect their interests considering that legal progress can only be achieved by the implementation of the rule of law in line with the objectives of the law. The overlapping of legal rules can create legal problems. IHC's determination is still a tough chore. Not many of the National IHC and UNESCO that have been recorded have pocketed Communal IPR from the Indonesian Ministry of Law and Human Rights. Even though it has been determined to UNESCO however if the communal is not properly maintained, then the UNESCO and National IHC certificates will be revoked. The position of a IHC becomes vulnerable to being taken over by other regions or other nations for economic interests and so on.

One case in point came from *Endek* as Balinese fabric weaving when Paris Fashion Week in France showcased traditional Bali-Indonesian fabrics weaving that violated IPR. However, luckily, the fabric was successfully patented by the Indonesian Ministry of Law and Human Rights in September 2020, as the Balinese people became the original owners of the IHC. Reflecting on this incident, IHC and Communal IPR must be given special protection and attention. Given that there is often a miss alignment between regulations, the community and law enforcement officials in law enforcement. In this case, further research needs to be carried out.

Although the protection of Balinese *Arak* may fall under IPR regime; however, this study focuses on the IHC perspective. This study focuses on two problems, among others, first, how is the regulation of traditional drinks, including Balinese *Arak* as an ICH. Second, how is the protection of Balinese *Arak* as one of the tradisional knowledge that is used commercially in the context of ICH. This study aims to determine the regulation of traditional drinks as ICH and to analyze the protection of Balinese *Arak* as one of the tradisional knowledge that is used commercially in the context of ICH.

Although there were several previous studies with similar topics; however, this study can be said original as studies conducted by: (1) Ni Putu Laksmi Cipta Devi and Anak Agung Ketut Sukranatha published on a journal in 2012 entitled "*Pelindungan Hukum Terhadap Paten Arak Bali*" focused on the issue of granting patents to *Arak Bali* and legal protection of *Arak Bali* patents<sup>6</sup>; (2) Cita Yustisia Serfiyani, Iswi Hariyani, and Citi Rahmati Serfiyani published on a journal in 2020 entitled "*Legal Protection towards Indonesian Traditional Alcoholic Beverages*" focused on legal protection of Indonesian traditional alcoholic in the field of cultural heritage and indications of origin that adapted to the characteristics of the legal culture in Indonesian society<sup>7</sup>; (3) I Wayan Arya Sugiarta, Sri Sulandari and I Nyoman Suargita published on a journal in 2022 entitled "*Implementasi Pengaturan Arak Bali Dalam Peraturan Gubernur Bali Nomor 1 Tahun 2020 Tentang Tata Kelola Minuman Fermentasi dan/atau Destilasi Khas Bali*" focused on effectiveness related to Bali Governor Regulation Number 1 of 2020 on the Management of Balinese Fermented and/or Distilled Drink,<sup>8</sup> meanwhile, this study focuses on the regulation of traditional drinks, including Balinese *Arak* as an ICH as well as the protection of Balinese *Arak* as one of the traditional knowledge that is used commercially in the context of ICH.

## 2. Research Methods

The research method used in this research is normative legal research, where the approaches used are statute as well as analytical and conceptual approach. Normative legal research is research by reviewing documents by collecting data with the literature study method and collecting journal materials with a description method by looking at problems that are happening in society. Descriptive analytical techniques are used in this study to analyze answers to research problems.<sup>9</sup> Legal materials are derived from primary legal materials, among others the Convention for the Safeguarding of the Intangible Cultural Heritage, Law No. 5 of 2017 on Advancement of Culture, Balinese Regional Regulation Number 4 of 2020 on Strengthening and Promotion of Balinese Culture as well as Bali Governor Regulation Number 1 of 2020 on the Management of Balinese Fermented and/or Distilled Drink (Local Distillation). The data used as material for this research is collected through literature studies, namely collecting various information and legal materials that are included in primary, secondary, and

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<sup>6</sup> Ni Putu Laksmi Cipta Devi Anak Agung Ketut Sukranatha, "Legal Protection of Arak Bali Patents," *Kertha Desa Journal* 10, no. 5 (2012): 347–58.

<sup>7</sup> Cita Yustisia Serfiyani, Iswi Hariyani, and Citi Rahmati Serfiyani, "Pelindungan Hukum Terhadap Minuman Alkohol Tradisional Khas Indonesia (Legal Protection towards Indonesian Traditional Alcoholic Beverages)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 11, no. 2 (2020): 267–87.

<sup>8</sup> I Wayan Arya Sugiarta, Sri Sulandari, and I Nyoman Suargita, "Implementasi Pengaturan Arak Bali Dalam Peraturan Gubernur Bali Nomor 1 Tahun 2020 Tentang Tata Kelola Minuman Fermentasi Dan/Atau Destilasi Khas Bali," *Public Inspiration: Jurnal Administrasi Publik* 7, no. 1 (2022): 53–59.

<sup>9</sup> I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Kencana Prenadamedia Group, 2019).

tertiary legal materials and then grouped, recorded, cited, summarized, and reviewed as needed.<sup>10</sup>

### **3. Result and Discussion**

#### **3.1. The Regulation of Traditional Drinks, Including Balinese *Arak*, As Intangible Cultural Heritage**

It is still a hot topic related to the legal protection of Traditional Cultural Expressions (TCE) both internationally and nationally to discuss in various circles considering that Indonesia itself does not have special rules related to TCE. If it's compared with other IPR, traditional knowledge, and TCE have existed for a long time, with an obscure creator, the ownership is communal, and the period of protection is difficult to limit because it is related to the identity of the community or traditional society that owns it.<sup>11</sup> The protection of traditional knowledge is regulated in both international law and Indonesia national law. The international community protects traditional knowledge as part of IPR. The World Intellectual Property Organization (WIPO) given the special attention to the protection of traditional knowledge through various forms. However, due to protect traditional knowledge through IPR it's difficult to implement considering that IPR is closely related to issues of ownership, originality, inventiveness and uniqueness. Apart from being an IPR, the international community also protects traditional knowledge as the rights of indigenous peoples.

According to the Geneva Conventions, traditional knowledge is a result of thinking activities that are then passed on between generations, as well as having a relationship with a particular group of people. This knowledge emphasizes the dissemination and gathering or gathering of knowledge between generations. From some of the definitions mentioned it can be seen that traditional knowledge has a special character that is practiced in descending order. The ownership of traditional knowledge is communal or jointly owned by the community. Traditional knowledge is the result of the interaction between the inventor and nature.<sup>12</sup>

The provisions related to traditional knowledge of Balinese *Arak* destillation as an IHC are regulated in several regulations, among others:

##### **3.1.1. Convention for the Safeguarding of the Intangible Cultural Heritage**

Indonesia has ratified the international conference on the protection and promotion of diversity of cultural expressions as a form of support for the protection of traditional knowledge and ICH. Through Presidential Regulation of the Republic of Indonesia

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<sup>10</sup> Rafika Amalia and Putu Aras Samsithawrati, "Protection of Video Copyright Works in the Framework of the Online Learning Process: Perspectives on the Exclusive Rights of Creators," *Journal of Master of Law Udayana*, 2022, 537-51, <https://doi.org/10.24843/JMHU.2022.v11.i03.p05>.

<sup>11</sup> Ni Ketut Supasti Dharmawan, "Protecting Traditional Balinese Weaving Trough Copyright Law: Is It Appropriate?," *Diponegoro Law Review* 2, no. 1 (2017): 57-84.

<sup>12</sup> R A Widiawari, "Protection of Traditional Balinese Cakes In An Intellectual Property Perspective," *Udayana Master of Law Journal* 9 , no. 3 (2020): 575-93.

Number 78 of 2007 concerning ratification of the Convention for the Safeguarding of the Intangible Cultural Heritage and through Presidential Regulation of the Republic of Indonesia Number 78 of 2011 concerning ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expression where Indonesia agreed on the Convention on the Protection and Promotion of the Diversity of Cultural Expression in the United Nations Education forum, Scientific, and Cultural Organization (UNESCO) . Recognition of cultural aspects and traditional knowledge, until now, can only be verified and recognized by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) related to things that are considered cultural heritage in the world. Article 2 paragraph (1) of the 2003 UNESCO Convention states that:

*“Intangible cultural heritage is a variety of practices, representations, expressions, knowledge, skills: as well as instruments-instruments, objects, artifacts and associated cultural environments encompassing various communities, groups, and in certain respects, individuals who are recognized as their cultural heritage.”*

ICH must contain the following characters:

*“...transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and provides them with a sense of identity and constiuity, thus promoting respect for cultural diversity and human creativity.”*

Based on this definition, an important point can be drawn that the nature of the object of ICH maintenance is passed on for generations, constantly updated by its community as a form of interaction of society with nature and history.

Article 14 of the Convention for the Safeguarding of the Intangible Cultural Heritage 2003 states that each state party shall endeavour, with all appropriate efforts to ensure the recognition, respect and improvement of ICH in society, especially through educational programs, awareness and information improvement, aimed at the community, especially the younger generation in addition to the management and research of science and means dissemination of non-formal knowledge. Within the framework of these intangible or intangible cultural protection activities, the participation of various communities, groups and individuals who create, maintain and disseminate such ICH must be effectively involved in management.<sup>13</sup>

### **3.1.2. Law Number 5 of 2017 on Advancement of Culture**

Article 33 paragraph (1) of the Indonesian 1945 Constitution mandates that “the state advance Indonesian national culture in the midst of world civilization by guaranteeing people's freedom in maintaining and developing their cultural values. On the basis of Article 33 paragraph (1), a law was born which is regulated in Law Number 5 of 2017 concerning the Advancement of Culture (The Law on Advancement of Culture). Article 5 of the Law on Advancement of Culture provides a definition of traditional knowledge is all ideas and ideas in society, which contain local values as a result of real experiences

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<sup>13</sup> Eva Juliana Purba and Akbar Kurnia Putra, “Perlindungan Hukum Warisan Budaya Tak Beda Berdasarkan Convention for The Safeguarding Of The Intangible Cultural Heritage2003 Dan Penerapannya Di Indonesia,” *Uti Possidetis: Journal of International Law* 1, no. 1 (2020): 90-117.

in interacting with the environment, developed continuously and passed on to the next generation”.

In accordance with Article 16 of the Law on Advancement of Culture inventarization of traditional knowledge which consists of several stages, there are recording and documenting, determining, and updating data through an integrated data collection system. Article 22 of the Law on Advancement of Culture is carried out by continuously improving data, passing on traditional knowledge to the next generation, and fighting for traditional knowledge as a world cultural heritage. Knowledge safeguards are carried out to prevent foreign parties from making claims to traditional knowledge. Article 26 of the Law on Advancement of Culture states that the rescue of objects of cultural promotion is carried out by means of: revitalization; repatriation, and/or restoration. Furthermore, Article 28 of the Law on Advancement of Culture states that publications are carried out for the dissemination of information to the public both domestically and abroad using various forms of media.<sup>14</sup> The Law on Advancement of Culture regulates the use of traditional knowledge. The use of traditional knowledge in the regulation does not prioritize the interests of welfare for indigenous peoples as owners but rather prioritizes social functions for all Indonesian people.

### **3.1.3. Bali Regional Regulation Number 4 of 2020 on Strengthening and Promotion of Balinese Culture**

The strengthening and promotion of Balinese culture is an anticipation of the dynamics of local, national, and global community changes that have an impact on the existence of Balinese culture and its development, as well as strengthening national culture and restoring Bali as the center of world civilization / *Bali Padma Bhuwana*. The Provincial Government mainstreams the strengthening and promotion of culture by making culture a source of values, character, wealth and welfare. Cultural mainstreaming is carried out through the Education and Empowerment of cultural ecosystems.

Regarding the regulation of Balinese *Arak* as a cultural heritage is regulated in Article 7 of Bali Regional Regulation Number 4 of 2020 on Strengthening and Promotion of Balinese Culture, which states that:

*“The Objects of Cultural Strengthening and Promotion include local wisdom, rites, sacred objects, traditional knowledge, traditional technology, traditional medicine, oral tradition, manuscripts, the site, customs, art, traditional architecture, language and script, folk games, traditional sports, crafts, design, fashion; and boga. The object of Strengthening and Promoting Culture as referred is sourced from the original Balinese cultural heritage, absorption culture, and/or the results of new creations of the Balinese people.”*

In this case, Balinese *Arak* as one of the objects of strengthening and promoting the culture of the traditional knowledge category has been regulated in Bali Government Regulation Number 4 of 2020 concerning the Strengthening and Promotion of Balinese Culture.

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<sup>14</sup>A R Zulkifli and A R Azhari, "Protection of Objects of Cultural Promotion According to Law Number 5 of 2017," *Doktrina: Journal of Law* 1, no. 1 (2018): 56–68.

#### **3.1.4. Bali Governor Regulation Number 1 of 2020 on the Management of Balinese Fermented and/or Distilled Drink**

The relationship between Balinese *Arak* and IPR gives the Governor of Bali the initiative to issue a pro-people regulation based on local wisdom through Bali Governor Regulation Number 1 of 2020 on the Management of Balinese Fermented and/or Distilled Drinks (Governor Regulation No. 1/2020). The issuance of the Governor Regulation No. 1/2020 aims to utilize balinese beverages as an economic resource in improving the welfare, especially the Balinese people, as well as strengthening and empowering artisans, realizing the governance of raw materials, production, distribution, control and supervision of Balinese fermented and/or distilled beverages.

However, the circulation of alcoholic beverages itself has been regulated independently in the Regulation of the Minister of Trade Number 25 of 2019 concerning the Sixth Amendment to the Regulation of the Minister of Trade Number 20 of 2014 concerning Control and Supervision of the Procurement, Circulation and Sale of Alcoholic Beverages and Presidential Regulation No. 74 of 2013 concerning Control and Supervision of Alcoholic Beverages which is still visible generalize the treatment between imported, concoction and traditional alcoholic beverages. This ban will also be strengthened by the formulation of a Draft Law on the Prohibition of Alcoholic Beverages that positions the use of traditional alcohol only for cultural and religious activities in local indigenous peoples without providing opportunities for traditional alcoholic beverage products to be produced for other broader benefits such as tourism icons, souvenirs and others part of the hereditary cultural heritage.

#### **3.2. The Protection of Balinese *Arak* as One of The Traditional Knowledge That is Used Commercially in the Context of Intangible Cultural Heritage**

Indonesia has a variety of local wisdom it's still respected and survives in the community. Maintaining local wisdom in the midst of the clash of foreign cultures and technological advances in this era of disruption is a challenge for the Indonesian nation. Local wisdom can range from views or philosophies of life to intangible traditional knowledge. Efforts to protect ICH from modernization and globalization process have actually been carried out in several Asian countries such as Japan and South Korea that have adopted laws to protect traditional practices and ceremonies threatened by the post-World War II. Japan with its traditional alcoholic beverages called *sake* and also South Korea with its *soju* and *makgeolli* are traditional alcoholic beverages that have been proclaimed as the country's IHC. Japan and South Korea then became the vanguard of protection against the intangible heritage supported by the states. Through the International Convention for the Safeguarding of Intangible Cultural Heritage 2003 this is for the first time raising intangible heritage to international screens, after thirty years of negotiations on how to protect folk traditions and culture.

Traditional knowledge is closely related to intellectual property as evidenced by traditional knowledge exists within almost all branches of intellectual property. Traditional knowledge is the identity of the Indonesian nation that can be utilized economically for the progress and welfare of society. Intellectual property law in Indonesia does not seem to be able to protect traditional knowledge because IPR is meant to protect the rights of individuals as subjects while in traditional knowledge it aims to



protect common or communal ownership. People considers that traditional knowledge is a public right so that people do not mind if their products are imitated.

If reviewed based under the Law of Advancement of Culture, the protection of traditional knowledgis maintenance to prevent the destruction, loss, or destruction of traditional knowledge. The maintenance of traditional knowledge is carried out by maintaining the noble value and wisdom of traditional knowledge, using traditional knowledge in everyday life, maintaining the diversity of traditional knowledge, reviving and maintaining the cultural ecosystem for each traditional knowledge and passing on traditional knowledge to the next generation. After maintenance is carried out, the rescue of traditional knowledge is also carried out to protect traditional knowledge. Rescue is carried out by means of revitalization, repatriation and/or restoration. Another form of protection is publications related to the inventory, security, maintenance, and rescue of traditional safeguards. Publication is carried out for the dissemination of information to the public both domestically and abroad using various forms of media. The use of traditional knowledge is carried out to build the nation's character, increase cultural resilience, improve community welfare, and increase the active and active role of Indonesian advocates in international relations.

The preservation of IHC is expected so that the community can receive commercial benefits for an TCE work that not only has customary and cultural value, but also has a high commercialization value. Iaccordance with the intellectual property which basically contains individualistic values.<sup>15</sup> The protection of Balinese Arak as one of the tradisional knowledge that is used commercially is regulated in Article 37 of the Law of Advancement of Culture, which states:

- (1) Large industries and / or foreign parties that will carry out the Utilization of Cultural Promotion Objects for commercial purposes are required to have a permit for the Utilization of Cultural Promotion Objects from the Minister.
- (2) The permit referred to in paragraph (1) must be qualified: a. to have a preliminary information; b. benefit sharing; and c. inclusion of the origins of the Object of Cultural Promotion.
- (3) The Central Government must use the proceeds from the distribution of benefits as referred to in paragraph (2) point b to revive and maintain the ecosystem of related Cultural Promotion Objects
- (4) Further provisions regarding permits for the Utilization of Cultural Promotion Objects as referred to in paragraphs (1), (2), and (3) are regulated by a Ministerial Regulation."

In accordance with the Article 37 of the Law of Advancement of Culture, the Indonesian Government gives permission to foreign parties who want to take advantage of Indonesian cultural objects on the condition that they must meet the principle of benefit sharing as a form of protection. The criteria for large industries are based on the Article 5 the Indonesia Minister of Industry Regulation Number 64 of 2016 concerning the Amount of Manpower and Investment Value for Industrial Business Classification that

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<sup>15</sup> K. Roisah, *Konsep Hukum Hak Kekayaan Intelektual* (Malang: Setara Press, 2015).

large industries are industries that employ at least 20 (twenty) workers and have an Investment Value of more than fifteen billion rupiah. The meaning by "foreign party" is a foreign national, a foreign organization, a foreign legal entity, a foreign corporation, or a foreign country. The use of cultural promotion objects to improve community welfare can be done through the processing into products. Large industries and/or foreign parties that will carry out the utilization of cultural promotion objects for commercial purposes are required to have a permit for the utilization of cultural promotion objects from the Minister.

Article 38 of the Law of Advancement of Culture regulates sanctions for large industries and/or foreign parties that violate the provisions as referred to in Article 37 paragraph (1) subject to administrative sanctions. Large industries and/or foreign parties that misuse permits for the Use of Cultural Promotion Objects as referred to in Article 37 paragraph (1) are subject to administrative sanctions. Administrative sanctions in the form of verbal reprimands, written reprimands, administrative fines, temporary suspension of activities, revocation of permits.

In terms of protecting traditional knowledge of Balinese *Arak*, there are still some disadvantages, such as limited data, documentation and information about traditional knowledge of Balinese *Arak*. The confirmation of legal protection of traditional knowledge needs to be formulated into a special law as a preventive measure for unwanted actions taken by foreign parties, Indonesia must have a kind of national data base, there needs to be a benefit sharing arrangement for traditional knowledge alcoholic beverages throughout Indonesia furthermore there needs to be arrangements regarding the provision of access to traditional knowledge possessed by Indonesia from outside parties.<sup>16</sup> As a country that has a wealth of traditional knowledge, the protection of traditional knowledge in Indonesia is important for several reasons, namely the consideration of justice, conservation, maintenance of culture and traditional practices, preventing dispossession, and development of traditional knowledge. In order to avoid unfair competition Traditional knowledge must be protected as well as possible so that it becomes an invaluable asset and helps economic development.

#### 4. Conclusion

Based on the description, it is concluded that the regulation of traditional drinks, including Balinese *Arak*, as intangible cultural heritages is regulated internationally and nationally in several related rules. Internationally, it is regulated in the Convention for the Safeguarding of the Intangible Cultural Heritage, while in Indonesian positive law it is regulated in Law No. 5 of 2017 on the Law on Advancement of Culture, Bali Regional Regulation Number 4 of 2020 on Strengthening and Promotion of Balinese Culture as well as Bali Governor Regulation Number 1 of 2020 on the Management of Balinese Fermented and/or Distilled Drink. Although IHC is for preservation, however, it can be interpreted that Law No. 5 of 2017 on Advancement of Culture is more than just preservation as it already regulates the commercialization of the object of cultural advancement in general. The protection of Balinese *Arak* as one of the traditional knowledge that is used commercially is protected under Articles 37 and 38 of Law No. 5

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<sup>16</sup> Trias Palupi Kurnianingrum, "Legal Protection of Traditional Medicine Knowledge," *Study* 23, no. 2 (2020): 111-28.

of 2017 on Advancement of Culture where the Indonesian Government gives permission to big industry and/or foreign parties who want to take advantage of Indonesian cultural advancement objects on the condition that they must meet the principle of benefit sharing as a form of protection.

As an effort to protect the community, the government should control the circulation of Balinese *Arak* in order to optimize potential, minimize danger, and disturbance of public order, it is necessary to regulate the circulation of alcoholic beverages needs to be limited to suit the needs of the tourism industry in line with the Regional Regulation of Bali Province Number 5 of 2012 concerning Control of the Circulation of Alcoholic Beverages considering that Balinese *Arak* Being abused or consumed in excess can have negative implications.

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### **Law and Regulations**

- Bali Regional Regulation Number 4 of 2020 on Strengthening and Promotion of Balinese Culture
- Bali Governor Regulation Number 1 of 2020 on the Management of Balinese Fermented and/or Distilled Drink
- Convention for the Safeguarding of the Intangible Cultural Heritage
- Law No. 5 of 2017 about The Law on Advancement of Culture and Balinese Governor Regulation Number 1 of 2020 concerning Balinese Fermented and/or Distilled Drink (Local Distillation)