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## Legal Protection of Processed “Nasi Kapau” Products are Linked to Intellectual Property Rights (Study at Nagari Kapau, Agam Regency)

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**Abstract:** West Sumatra is a province that has undoubted delicious cuisine that has gone global and is known as Minangkabau cuisine. One of the famous Minangkabau dishes is Nasi Kapau. Nasi Kapau is a traditional dish originating from Nagari Kapau and has special processed products that are different from dishes in the Minangkabau realm. In Law Number 20 of 2016 concerning Brands, the role of Brands and Geographical Indications is very important, especially in maintaining healthy, fair business competition, protecting consumers, as well as protecting Micro, Small and Medium Enterprises and domestic industry. In fact, there are already several Nasi Kapau dishes that have been registered with the Ministry of Law and Human Rights, such as Nasi Kapau Uni Lis. The potential for not carrying out an inventory or recording it will give rise to legal problems, namely legal disputes. Various cases that have occurred both claim "The ownership of intellectual property by other people or other countries causes cultural losses and even loss of commercial value. The results of this research explain that First, Registration of the trademark on Nasi Kapau is an effort to avoid recognition by other countries which violates the ownership of the owner of the processed product. Second, Registration of the Kapau rice brand as a form of preservation carried out by the Nagari Kapau community for the advancement of Minangkabau culture in Indonesia. Third, The government encourages the public to register processed products in the form of kapau rice through individual brands and communal brands in the form of nasi Padang licenses. It is advisable for the people of Nagari Kapau to register their processed Kapau rice products in the form of a patent as a form of intellectual property rights protection in the form of appreciating their work for the sake of community welfare and a healthy business climate.

**Keyword:** Trademark ,Nasi Kapau, MinangKabau, Welfare.

### INTRODUCTION

The Indonesian nation is a nation consisting of various backgrounds, including ethnicity, language, culture and customs. This reflects extraordinary cultural richness, but this diversity also brings challenges in managing and protecting intellectual property that arises from this

diversity. This situation creates new challenges in the context of the protection of Intellectual Property Rights, hereinafter referred to as IPR. IPR in civil law can be categorized as object rights, this is in line with the provisions of article 499 and article 503 of the Civil Code (KUHP) which defines objects as each item, each right, which can be controlled by property rights. IPR is an economic right granted by law to a creator or inventor over a work resulting from human intellectual abilities. The forms of ownership of Intellectual Property are divided into two, namely Personal Ownership and Communal Ownership. Personal Ownership consists of: Copyrights, Patents, Trademarks, Industrial Designs, Trade Secrets, Integrated Circuit Layout Designs, and Plant Varieties. Meanwhile, communal ownership consists of: Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, Indications of Origin, Potential Geographical Indications.

To protect Traditional Cultural Expressions of course legal protection must be implemented. Brand protection is very important to prevent misuse and exploitation of the Nasi Kapau brand. In addition, brand protection on Nasi Kapau prevents the loss of cultural identity of the community that owns it along with the extinction of traditional cultural knowledge and expressions. Legal protection is divided into two, namely:

a) Preventive Legal Protection

Protection provided by the government which aims to prevent violations or disputes from occurring. This protection refers to applicable legislation

b) Repressive Legal Protection

This is the final protection which can take the form of sanctions such as local government, prison and other punishments if a violation occurs. More aimed at resolving disputes.

Preventive and repressive legal protection is needed to protect traditional cultural expressions. Preventive efforts include recording creations, documenting and creating database systems, as well as increasing the role of relevant legal entities in efforts to protect traditional cultural expressions. Repressive measures that can be taken include resolving disputes through court, arbitration or alternative dispute resolution, sharing profits from the use of traditional cultural expressions, as well as providing criminal sanctions to parties who violate the use of traditional cultural expressions.

The rights to communal brands are held by the state. In article 3 paragraph (2) of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property, it is stated that the State is obliged to inventory, safeguard and maintain Communal Intellectual Property. Based on Minister of Law and Human Rights Regulation No. 13 of 2017 concerning Communal Intellectual Property Data in Article 7 states that Communal Intellectual Property must be inventoried by the Minister and can collaborate with Ministries/Institutions and/or Regional Governments. The minister referred to in this article is the Ministry of Law and Human Rights. Meanwhile, the Regional Government is the Provincial Government and Regency/City Government through the Tourism and Culture Office.

Here, the Ministry of Law and Human Rights, through the Directorate General of Intellectual Property, is a state institution that has the task and authority to issue legality for registration by providing registration certificates to Communal Intellectual Property that has been inventoried. This registration certificate is proof or legality that the Traditional Cultural Expression has been legally protected by the state.

Based on data obtained from the Website of the Directorate General of Intellectual Property, Ministry of Law and Human Rights <https://kikomunal-indonesia.dgip.go.id/> Data on Traditional Cultural Expressions from West Sumatra Province recorded at 11. Meanwhile, based on cultural heritage data from West Sumatra Province recorded on the website <https://warisankultur.kemdikbud.go.id>, there are 482 cultural heritages. Based on the data above, this shows that there are still 471 Traditional Cultural Expressions of West Sumatra Province that have not been inventoried or registered with the Directorate General of

Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia. One of the weaknesses in developing a Traditional Knowledge protection system is the very limited data, documentation and information regarding Traditional Knowledge which has actually existed for hundreds of years. . The absence of written documents regarding Traditional Knowledge has become one of the reasons why patents are granted by the patent office considering the absence of supporting documents (prior art) which could invalidate the invention in question. Not only that, not all ownership of traditional knowledge is owned by the public "common property". Referring to the boundaries of ownership introduced by Heller, some of the ownership of drug knowledge that exists in indigenous communities is private. Reflecting on past experiences where Malaysia once claimed the plate dance originating from the city of Solok, West Sumatra as the original culture of its country. Malaysia has also done the same thing with batik, reog ponorogo dance and angklung music. Looking at this case, Traditional Cultural Expressions are part of the Communal brand, and the state must legally recognize and record them. This is definitely for protection, preservation, development and/or utilization in order to support community welfare and realize national resilience.

In contrast to other segments of intellectual property law which have exclusive ownership and are owned by individuals, Communal Intellectual Property is owned by a group of people in a region or country who own it and there are cases of claims of ownership of these assets by parties who are not the proper owners, therefore It is very important for legal protection of Communal Intellectual Property.

Based on the case above, Communal Intellectual Property must be legally protected by DJKI, Ministry of Law and Human Rights. By carrying out this inventory, DJKI can strengthen sovereignty and proof of ownership of Indonesian Communal Wealth to prevent cultural claims by other countries, which will certainly be detrimental to the Indonesian state itself. Therefore, we will not have initial evidence if a dispute occurs regarding traditional culture if the Directorate General of Intellectual Property does not provide legal protection through an inventory.

## **METHOD**

To protect Traditional Cultural Expressions of course legal protection must be implemented. Brand protection is very important to prevent misuse and exploitation of the Nasi Kapau brand. In addition, brand protection on Nasi Kapau prevents the loss of cultural identity of the community that owns it along with the extinction of traditional cultural knowledge and expressions. Legal protection is divided into two, namely:

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## **RESULTS AND DISCUSSION**

### **Maintaining and Transforming Processed Products as Traditional Food**

In preserving traditions and customs, you must be active in planning and making decisions related to processed regional products. The processed products of a region have potential

economic value which can actually encourage regional development. Traditional knowledge in the product processing sector, namely food, is one way of introducing an origin or region, both at national and international levels. Traditional Knowledge and Traditional Cultural Expressions are an issue that must be protected and paid attention to, because of how many cultures there are in the world and the uniqueness that these cultures have. . Traditional knowledge itself is the result of the thought patterns of ancestors which become a tradition and are passed down to the next generation . Maintaining processed traditional products is part of the investment to build national civilization as is the goal of national development. In Law Number 5 of 2017 concerning the Advancement of Culture, it is mandated that the state has a role in encouraging the protection of Indonesian national culture as a form of responsibility to encourage the potential economic value of a region.

Community participation in protecting and preserving processed products is part of saving cultural products from the development of the era of globalization. Cultural traditions as something that is passed down from one generation to another through a legal instrument that is close to the community can ensure that culture develops well between generations. . The theoretical aspect is that tradition is an investment that contains original local wisdom (genuine) . Preserving cultural products is a cultural activity as a ritual to maintain its existence for the survival of the people of the area. Soetandyo Wignjosebroto in Bernadinus Steni mentions the concept old existing native for a society that, based on its history, existed long before the Unitary State of the Republic of Indonesia existed as something that was almost natural without any artificial contractual arrangements, the political-legal approach must indeed see that this entity does exist with value (value) its authenticity that should be maintained in the state .

Maintenance and transformation of processed products in the form of "Nasi Kapau" is a cultural activity to maintain its existence so that it is not lost to the erodes of time. In general, the definition of processed products according to Law Number 18 of 2012 concerning Food is that "Processed food is food or drink resulting from processing in a certain way or method with or without additional ingredients". Like "Nasi Kapau" which comes from Nagari Kapau, West Sumatra, it is a typical food with a method or method that is different from other processed products. The different methods or methods of "Nasi Kapau" are certainly an attraction and characteristic value of the area, thereby creating economic value that has an impact on the region or village that produces "Nasi Kapau". In the Communal Intellectual Property Regulations "Nasi Kapau" is the result of a Potential Geographical Indication which explains "an item and/or product which, due to geographic environmental factors including natural factors, human factors, or a combination of both factors, gives a particular reputation to the item and/or product produced, which has the potential to be protected by a geographical indication and has not been registered as an indication geographical".

The combination of processed products "Nasi Kapau" comes from natural and human factors which have the potential to be protected from profiteering by other irresponsible parties. This form of maintenance of "Nasi Kapau" is a step to protect the products of the people of the area. This form of maintenance of "Nasi Kapau" is an acknowledgment of the existence of ethical and moral rights belonging to the Nagari Kapau community which must be obeyed. Furthermore, L. Bently and Brad Sherman stated that the reason that the recognition of the existence of rights that can protect someone's intellectual property can be accepted is because:

- a. Ethical and moral reasons, for example the protection of copyrights produced by human labor, or the protection of trademarks as a form of preventing unauthorized use by third parties
- b. Another reason is related to the provision of incentives which will influence a person's activities in producing something, for example in the patent regime which provides rewards in the form of incentives for inventors for the results of their research or discoveries.

The existence of Government Regulation Number 58 of 2022 concerning Communal Intellectual Property as a legal umbrella or guideline for the Nagari Kapau community

regarding the importance of preserving the product "Nasi Kapau". PP Number 58 of 2022 is the protection of communal (group) intellectual property to safeguard the interests of local communities. Moral rights in the Kapau rice brand itself consist of ownership rights, the right not to infringe on ownership, the right not to harass, and in some countries the right to grant permission for the publication or publication of communal intellectual property to the public. We know that the product "Nasi Kapau" which is well known abroad as a typical Minangkabau food actually has the potential for recognition by other countries which violates the ownership of the owner of the product. Moral rights to communal intellectual property itself consist of:

- 1) Ownership rights in relation to the Community's communal intellectual property
- 2) The right not to have fake communal intellectual property related to intellectual property belonging to the community; And
- 3) The right not to disparage protected communal intellectual property.

Moral rights contained in communal intellectual property according to Government Regulation Number 58 of 2022 as appreciation for work results and the right to sue the communal community against third parties who make claims without permission and derogatory behavior towards communal property products.

The exclusive rights granted by the state to individual IPR actors (inventors, creators, designers, and so on) are intended as nothing more than appreciation for their work (creativity) and so that other people are motivated to further develop it, so that with the IPR system the interests of society are determined through market mechanisms. Exclusive rights for the Nagari Kapau Community can become legal legitimacy (legal standing) in carrying out legal action. In this way, the benefits of the Nagari Kapau community from registering their processed product "Nasi Kapau" can increase its maintenance and transformation as a traditional West Sumatran food.

The Nagari Kapau community is actually a form of maintenance and transformation of "Nasi Kapau" which has been produced for generations. In fact, PP Number 58 of 2022 is a form of respect for the government to protect and preserve communal processed products as a long-term investment. The role of the Nagari Kapau Community as producers of the product "Nasi Kapau" has an obligation to maintain the product "as a form of protection and maintenance of the cultural values that have been given to them by their ancestors. Therefore, the existence of PP Number 58 of 2022, forms the role of the community in preserving processed products in order to prevent acts of violating ownership, harassing, or degrading communal intellectual property by third parties as mandated by statutory regulations.

### **Customary Norms in Maintaining, Developing and Transforming Processed Products from West Sumatra**

Customs are a social system that is developed in accordance with the time, place and social rules that apply at that time. It can also be said that these customs are the cultural creations of the Minang people which can change according to circumstances and places, but everything is within the boundaries of custom and the traditional savanna. The people in Minang Kabau really prioritize existing traditional values in order to preserve and protect natural products and their work, especially processed food products. According to Nia Kurmasih, conservation is carried out in several forms, including protection, care and utilization of resources, each of which has its own purpose. Efforts to preserve typical Minangkabau culinary delights among overseas Minangkabau families can be seen from eating patterns which are defined as habits that are cultivated in the context of culinary preservation which includes protecting, caring for and utilizing resources based on sufficient percentage criteria, although if we look at them one by one there are still some that exist. below 41% and some are above 60%. Based on the results of the research, it is clear that efforts to preserve the eating patterns of overseas Minang families are still being implemented according to hopes and expectations by looking at several

similarities in diction or meaning in respondents' answers which indicate that there is a pattern of teaching about eating traditions in the family. .

The impact of the still strong culture of preserving processed food by the Minang Peratauan has been to uphold traditional norms. The preservation of Nasi Kapau carried out by the Minangkabau Community is a form of advancing Indonesian culture. Customary norms can be a control tool to maintain ownership of our cultural products so that they continue to be maintained so that they do not lose their existence in society. Indonesia has Law Number 5 of 2017 concerning the Advancement of Culture which aims to increase cultural resilience and the contribution of Indonesian culture in the midst of civilization through the development and utilization of local cultural products themselves. The preservation of Nasi Kapau itself has contributed to the development of the Indonesian economy from the culinary sector. In fact, the typical Minang Kabau food, one of which is Nasi Kapau, is already known in several countries in the world.

The closeness of culinary delights to traditional Minangkabau culture means that this sector has many internalized values, including the value of endeavor. The value of this effort has resulted in Kapau Rice being a processed food product that must be supported by the government through legal products in the form of intellectual property products with legal protection. In the process of developing the processed product, namely "Nasi Kapau", adaptation needs to be made. Adaptation is a collaboration of immigrant efforts and acceptance of the local environment in order to achieve mutual cultural acceptance . The adaptation process is important for traditional culinary delights, not only to advance culture, but also to maintain the authentic value of the dish. However, one of the things that must be maintained for the "Nasi Kapau" dish is the way it is served. The way the Nasi Kapau dish is served is different from the form.

In terms of presentation, if nasi Padang is served by the seller at the buyers' table, then nasi kapau has a different method. Because buyers approach the seller to order the food and directly choose the side dishes they want. Meanwhile, the seller will immediately serve it on a plate, according to the buyer's request

The difference in the way Nasi Kapau is served with other Minangkabau foods is a tradition passed down from generation to generation and has become a customary norm in the local community. Government Regulation Number 56 of 2022 concerning Communal Intellectual Property regulates traditional cultural expressions. Expression of traditional culture as traditional values, perspectives and forms that must be maintained and developed . The government's role has been to provide a forum in the form of regulations for the Nagari Kapau community to be able to protect the method of serving the "Nasi Kapau" dish as communal intellectual property in order to increase its integrity value and avoid recognition by other irresponsible parties. Therefore, the role of the nagari community in protecting the Nasi Kapau dish is that it is necessary to register the processed products and the way they are served as a form of maintenance and preservation according to Minangkabau customs.

### **The Role of Regional Government in Protecting Processed Products from West Sumatra**

Regional government as a figure who prioritizes and prioritizes the local community is an obligation that must be carried out. Regional Governments have a strategic role in coaching and supervising their regions. Because in Law Number 23 of 2014 concerning Regional Government Chapter I concerning General Provisions Article 1 number 5 states that government affairs are government powers which are the authority of the President whose implementation is carried out by state ministries and Regional Government administrators to protect, serve, empower and prosper public . According to E. Koswara K, government leadership is trustworthy, moral and responsible. Leadership is a pro-active, dynamic and challenging process. Apart from that, a government leader should be a pioneer in all social life

and government always strives to improve everything that is unknown to become known and become light for the people. . The government encourages people to register their processed products as a form of empowerment and prosperity for their region. The processed product "Nasi Kapau" is an important thing to be able to register in order to create economic value and avoid recognition from other irresponsible parties.

According to Government Regulation Number 56 of 2022 concerning Communal Intellectual Property, the government's role is central in preserving the processed "Nasi Kapau" product originating from Nagari Kapau. The form of a cultural inventory is part of cultural advancement in Indonesia. The role of the West Sumatra regional government in encouraging processed products in "Nasi Kapau" is to advance the cultural products of the Kapau village so as to provide economic development for the region. Communal intellectual property investing is a form of security from foreign parties who make claims to the object . It is an indication that a regional government has succeeded in protecting its regional communal wealth if it is able to secure it from foreign parties who would claim it. As these provisions are regulated in Article 22 paragraph (4) of Law Number 5 of 2017, namely;

Securing Objects for the Advancement of Culture is carried out by:

- a) updating data in the Integrated Cultural Data System continuously;
- b) pass on the Objects of Cultural Advancement to the next generation; And
- c) fighting for Cultural Development Objects as world cultural heritage

The form of security carried out by the regional government regarding "Nasi Kapau" can have a positive impact, especially on the object of Cultural Advancement as a world cultural heritage. So. In terms of maintenance, "Nasi Kapau" can prevent its loss or destruction due to eroding over time. The benefits of the Government in maintaining processed "Nasi Kapau" products can be explained through Article 24 paragraph (4) of the Law on the Advancement of Culture, namely;

Maintenance of Cultural Advancement Objects is carried out by:

- a) maintaining the nobility and wisdom of Cultural Development Objects;
- b) using Cultural Development Objects in everyday life;
- c) maintaining the diversity of Cultural Advancement Objects;
- d) animating and maintaining the Cultural ecosystem for each Cultural Development Object; and
- e) pass on the Objects of Cultural Advancement to the next generation

Nasi Kapau itself has different characteristics in serving food from other Minangkabau dishes. The reason is that the presentation has been directly taken by the seller until it is directly given by the buyer. Then, the characteristic of "Nasi Kapau" itself is in the "Kapau" or rice stall with bagonjong house architecture. The maintenance carried out by the government through this inventory can maintain the cultural ecosystem and maintain the unique characteristics of "Nasi Kapau" itself. The state has noticed how important it is to protect the results of communal wealth in Indonesia. The author analyzes that cultural results are a symbol that can provide positive benefits for Indonesia, especially capital for economic development in each region.

In terms of utilization in promoting culture, "Nasi Kapau" can improve the welfare of the Nagari Kapau community. As explained in Article 34 paragraph (1) of Law Number 5 of 2017 that "Utilization of Objects for the Advancement of Culture to improve community welfare as intended in Article 32 paragraph (21 letter c) can be done through processing Objects for the Advancement of Culture into products". Not only that, the impact of using cultural motorcycle taxis on "Nasi Kapau" can increase Indonesia's active role and influence in international relations. In general, people abroad, processed products from the Minangkabau realm are only known as nasi Padang. Even though "Nasi Kapau" and Nasi Padang are very different both in processing and in the way they are served. The impact of introducing Nasi Kapau through a communal wealth inventory can increase the competitive power of West Sumatra Tourism in



the international arena. Therefore, the government's role in investing in processed products from "Nasi Kapau" from Nagari Kapau is a necessity in order to safeguard, maintain, avoid claims from foreign parties and improve the welfare of the Nagari Kapau and Minangkabau communities.

## CONCLUSION

This form of maintenance of "Nasi Kapau" is an acknowledgment of the existence of ethical and moral rights belonging to the Nagari Kapau community which must be obeyed. Registration of the trademark on Nasi Kapau is an effort to avoid recognition by other countries which infringes on the ownership of the owner of the processed product. The role of the community in Nagari Kapau as producers of the product "Nasi Kapau" has an obligation to register a trademark for the product "as a form of protection and maintenance of the cultural values that have been given to them by their ancestors.

Registration of the Nasi Kapau brand is a form of preservation carried out by the Nagari Kapau Community for the advancement of Minangkabau culture in Indonesia. Registration of the Nasi Kapau brand carried out by the Minangkabau Community is a form of advancement of Indonesian culture. One form of preservation of Nasi Kapau is trademark registration with the Ministry of Law and Human Rights in order to protect the work produced by the Nagari Kapau Community.

The government encourages people to register their processed products as a form of empowerment and prosperity for their region. The processed product "Nasi Kapau" is an important thing to be able to register in order to create economic value and avoid recognition from other irresponsible parties. The existence of Law Number 20 of 2016 concerning brands is a momentum for the West Sumatra Regional Government to introduce processed products to foreign countries through "Nasi Kapau" which is owned by the Minangkabau Community in Nagari Kapau.

It is advisable for the people of Nagari Kapau to register the processed Kapau rice products in the form of a patent as a form of protection for intellectual property rights. in the form of appreciating work results for the welfare of society and a healthy business climate.

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