

Bale Mediation as an Alternative Institution For Resolution of Communal Intellectual Property Rights Disputes Among Indigenous Communities in West Nusa Tenggara

Abdul Atsar¹, Lalu Achmad Fathoni²,

^{1,2} Faculty of Law, Social and Political Sciences, Universitas Mataram, Indonesia.

E-mail: abdulatsar@unram.ac.id

Abstract: The settlement of communal intellectual property rights disputes is not only through litigation, but is also possible through mediation. The purpose of this study is to determine the position of the mediation hall as an alternative institution in resolving communal intellectual property disputes and in the judicial system in Indonesia and how the legal force of the Bale Mediation decision is in resolving Communal Intellectual Property disputes. This research method uses normative legal research, namely legal research conducted by examining library materials or secondary data. Based on the results of the study, Bale Mediation is an institution that carries out the functions of mediation, coaching and coordination in the implementation of mediation in the community in accordance with local wisdom in the context of legal reform in the field of resolving Communal Intellectual Property Rights disputes. Bale Mediation is not part of the state judiciary but rather an institution that resolves disputes outside the courts. Legal settlement of Communal Property disputes through Bale Mediation is a non-structural institution and is responsible to the Governor. The decision or result of the dispute resolution at the Mediation Center in the form of an agreement that does not yet have permanent legal force but is only an ordinary contract for the parties, only obtains the status of a peace deed after the parties, with or without the assistance of a mediator, file a peace lawsuit through the Commercial Court/District Court.

Keywords: : Dispute, Mediation Chamber, Communal Intellectual Property

1. Introduction

Lombok has a lot of communal intellectual property, one of which is the geographical indication product from NTB that appears, namely Sumbawa Wild Horse Milk, Lombok Water Spinach, Sumbawa Forest Honey, Tambora Robusta Coffee, Lombok Pearls, and Sembalun Lombok Arabica Coffee. The ownership of which is communal, this is very susceptible to violations or disputes between regions and KIK violations. Problems or disputes over ownership of communal property are likely to occur even though they have not been heard of so far, for example regarding the use of the geographical indication logo on one of the products protected by Geographical Indication, for example regarding the quality and reputation of the Geographical Indication itself, sometimes the area or region that uses the IG is not an area protected by IG but uses the Geographical Indication logo so that the quality and reputation of the Geographical Indication decreases and is very detrimental to the real Geographical Indication owner or registered Geographical Indication.

Problems or disputes usually occur in various economic and business activities that utilize Communal Intellectual Property. Differences of opinion, conflicts of interest, and fear of being harmed are often the causes of these problems or disputes. Settlement of business

disputes based on communal intellectual property is usually known to be carried out only using litigation or dispute resolution through a commercial trial process. The settlement of the dispute begins with the filing of a lawsuit with a commercial or district court and ends with a judge's decision. The trial process in a commercial/district court is a costly and time-consuming process. Because in a conventional court system, the parties are naturally opposed, often resulting in one party as the winner and the other party as the loser. However, in addition to dispute resolution through the litigation process, there is also dispute resolution through non-litigation. Settlement through non-litigation is dispute resolution carried out using methods outside the court or using alternative dispute resolution institutions. In Indonesia, there are two types of non-litigation settlement, namely Arbitration and Alternative Dispute Resolution in accordance with Law Number 30 of 1999 Arbitration and Alternative Dispute Resolution.

In the NTB community (the Sasak tribe on the island of Lombok, the Samawa and Mbojo tribes on the island of Sumbawa, where each village and sub-district also has a customary institution), dispute resolution is often carried out outside the formal channels by means of deliberation and referring to customary and religious law values (local wisdom). Therefore, the dispute resolution process generally involves religious figures (Tuan Guru), traditional leaders and village heads¹. Including in the resolution of civil and criminal cases.

The Mataram city government, West Nusa Tenggara has formed a mediation hall as an effort to provide access to the community in resolving disputes, both civil and minor criminal offenses. The Mediation Hall is a mandate from the NTB Provincial Regulation No. 9 of 2018 and the Mataram Mayor Regulation No. 40 of 2019 concerning the establishment of the Mediation Hall. What is the position of the mediation hall as an alternative institution in resolving communal intellectual property disputes and in the judicial system in Indonesia and what is the legal force of the Mediation Hall's decision in resolving Communal Intellectual Property disputes?

2. Method

This type of research is normative legal research, namely legal research conducted by examining library materials or secondary data² also called doctrinal research, where law is often conceptualized as what is written in statutory regulations (law in books) or conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate.³

¹ Haeruman Jayadi, Kewenangan Bale Mediasi Dalam Penyelesaian Sengketa Pidana dan Perdata Berdasarkan Peraturan Daerah NTB Nomor 9 Tahun 2018 Tentang Bale Mediasi, *Jurnal Kompilasi Hukum*, Volume 7 no. 1 (2022): 60

² Soerjono Soekanto dan Sri Mamuji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2013, 13.

³ Amiruddin dan H Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada, 2006, 118

The statute approach is used to understand the rules on alternative dispute resolution institutions. The conceptual approach is used to understand the concepts of intellectual property rights and the Justice System and Alternative Dispute Resolution Institutions. In this study, secondary data sources are used, consisting of:

- 1) Primary legal materials, namely binding legal materials, consisting of laws and regulations, jurisprudence, and treaties. The primary legal materials used in this study are national laws and regulations related to the object of this study.
- 2) Secondary legal materials, namely all legal materials that provide explanations of primary legal materials. Includes journals, reference books, scientific works of scholars, scientific research results that review the legal problems studied by including other social sciences. Secondary legal materials are mainly law books including legal theses and dissertations, explanations of laws and legal journals.⁴
- 3) Tertiary legal materials, namely all legal materials that provide guidance/explanation of primary and secondary legal materials. Includes materials from internet media, dictionaries, articles in journals or newspapers.

To obtain data relevant to the problems studied, associated with the type of qualitative legal research, the data collection technique begins with tracing laws and regulations and documents that are considered relevant to the main problems studied, then continued with a study of the problems studied by analyzing laws and regulations.

In addition to reviewing regulatory documents, the researcher also collected data at the research location in Mataram City.

The analysis method in this study, the author uses a qualitative description method, namely data obtained from literature studies, after which it is selected based on the problems seen with applicable provisions, then concluded so that the answer to the problem is obtained.

3. Discussion

Communal intellectual property has a distinctive characteristic, namely that it is communal in nature, in the sense that the profits and interests that are prioritized are the interests of many people.⁵ The concept of communal ownership refers to the existence of rights that can be enjoyed by many people or groups of people with a traditional economic system that is a supporter of a culture towards its environment, in an effort to meet its needs in accordance with traditional implementation patterns. Meanwhile, in relation to Common Property, it can be interpreted that society as a whole has the same opportunity to enjoy the potential contained in nature. Communal intellectual property has contained the meaning of ownership for people in certain areas or regions to utilize part of the economic label that can improve the welfare of the local community.⁶

⁴ Suratman dan H. Phillips Dillah, *Metode Penelitian Hukum*, Bandung: Alfa Beta, 2012, 155

⁵ Dewi Sulistianingsih, Yuli Prasetyo Adhi, Pujiono Pujiono, Digitalisasi Kekayaan Intelektual Komunal di Indonesia, *Seminar Nasional Hukum Universitas Negeri Semarang*, 7 no. 2 (2021): 651

⁶ Yulia Nizwana. "Kekayaan Intelektual Komunal Dalam Perspektif Teori Hak Milik". *Jurnal Dedikasi Hukum Prodi Ilmu Hukum Universitas Dharma Andalas* 1 no. 2 (2022): 93.

Communal intellectual property is intellectual property that is owned by the general public and is communal in nature⁷. Communal Intellectual Property, hereinafter abbreviated as KIK, is intellectual property in the form of Traditional Cultural Expressions (EBT), Traditional Knowledge (PT), Genetic Resources (SDG) and Potential Geographical Indications. PP No. 56 of 2022 concerning Communal Intellectual Property, Article 1 number 1: Communal Intellectual Property, hereinafter abbreviated as KIK, is intellectual property whose ownership is communal and has economic value while still upholding the moral, social, and cultural values of the nation. Communal intellectual property (KIK) is intellectual property owned by the general public that is communal in nature consisting of Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, and Potential Geographical Indications.

Communal Intellectual Property itself is divided into 4 types. The first is Traditional Knowledge, namely intellectual work in the fields of knowledge, techniques, skills, and practices that are developed sustainably from generation to generation. Some examples of products from communal intellectual property in the traditional knowledge category include the manufacture of traditional food products that are familiar to our daily lives, such as making tempeh. The second is Traditional Cultural Expression, which includes traditional forms of cultural expression. Among them are traditional arts or music, traditional ceremonial rituals, and traditional dances. The third is Genetic Resources, namely plants or animals that are used and utilized and are believed to have properties in certain communities, such as various traditional fermented drinks, such as tuak and so on tempeh. Fourth, is the Potential Geographical Indication, which is a sign that shows the area of origin of an item that can provide certain characteristics of the item. Some examples are Batu Apples from East Java and Subang Pineapples from West Java.

Communal Intellectual Property such as dance and also traditional ceremonies for example, are very large assets to be processed and utilized as tourist attractions, which of course will bring many economic benefits to the community. Likewise, other things such as making food and also traditional clothing for example, also have great potential to improve the community's economy. Woven fabrics that are made traditionally and also various traditional foods can be utilized and also sold so that the community's economy can grow even more.

Claims or recognition of ownership of Communal Intellectual Property such as Geographical Indications or traditional knowledge. Traditional Cultural Expressions Become the root of the problem or source of dispute, this claim is not only made by foreign communities who come to Lombok but will also occur between villages or indigenous communities in the Province of West Nusa Tenggara in this study on Lombok Island.

West Nusa Tenggara Province has many Communal Intellectual Property, one of which is in North Lombok Regency, namely Jong Bayan. Jong Bayan is a traditional cultural expression that includes various aspects of the lives of the indigenous people of North

⁷ Robiatul Adawiya dan Rumawi. "Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal di Indonesia". *Jurnal Ilmiah Hukum Kenotariatan* 10 no.1 (2021): 45 DOI: <http://dx.doi.org/10.28946/rpt.v10i1.67>

Lombok, especially in the use of traditional clothing in the form of jong (head covering) made of woven cloth, used in various sacred and religious events. East Lombok Regency has KIK in the form of beberok aik pindang. What distinguishes it from beberok in general is the mixture of Pindang sauce or fish essence which gives it a distinctive taste. West Lombok Regency in the form of Maringkik Island woven cloth and in Central Lombok there is Sukarara Village Woven Cloth.

Indonesia's communal intellectual property is still not sovereign so that Indonesia's superior products are vulnerable to being stolen and claimed. Communities tend to be uninterested in taking economic benefits from communal intellectual property due to their lack of knowledge.⁸ The people of Lombok are no exception. Lombok has its own customs. The indigenous people in West Nusa Tenggara who are the majority population are the Sasambo Tribe (Sasak, Sumbawa, and Mbojo). These tribes live on the islands of Lombok and Sumbawa.

The Indigenous Peoples Alliance of the Archipelago (AMAN) defines indigenous peoples as Communities that live based on their hereditary origins on a customary territory, which have sovereignty over land and natural resources, socio-cultural life regulated by customary law and customary institutions that manage the sustainability of the lives of their people. Indigenous communities are groups of people who have ancestral origins (hereditary) in a certain geographical area, and have their own value system, ideology, economy, politics, culture, social and territory. West Nusa Tenggara has one of the indigenous communities that still maintains its authenticity, namely Dusun Sade, Rembitan Village, Central Lombok Regency. Dusun Sade is one of the villages that has its own uniqueness compared to other indigenous communities in Lombok. The local wisdom of Sasak Sade is a concept that refers to cultural values and traditions. Sasak Sade is famous for its rich local wisdom both in terms of social systems, environmental management and in everyday life. The social system in the local wisdom of Sasak Sade has an important role because of its strong social structure and respects the values of mutual cooperation, helping each other, and needing each other. One of the values reflected in everyday life is mutual cooperation in building traditional houses. In addition, the local wisdom of the Sasak Sade also includes daily life with traditions and customs.⁹

Disputes occur due to situations where one party feels disadvantaged by the actions of another party. In addition, disputes will arise due to two or more parties having different (different) positions or opinions. Disputes that arise in indigenous communities include claims to ownership of communal intellectual property.

One of the causes of communal intellectual property (CIP) violations is 1) Lack of knowledge about communal intellectual property registration/recording; 2) Indigenous communities believe that they can run a business without registering/recording communal intellectual property (CIP); 3) The community's assumption that communal

⁸ Winda Risna Yessiningrum. "Perlindungan Hukum Indikasi Geografis Sebagai Bagian Dari Hak Kekayaan Intelektual." *Jurnal IUS Kajian Hukum dan Keadilan* 3, no. 1 (2015): 43, doi:<http://dx.doi.org/10.12345/ius.v3i1.198>

⁹ Emilia Sahira. "Nilai dan Makna Dalam Kearifan Lokal Rumah Adat Suku Sasak (Studi di Dusun Sade Desa Rembitan Kabupaten Lombok Tengah)." *Jurnal Ilmiah Profesi Pendidikan* 8 no. 4: (2023): 2595

intellectual property (CIP) registration/recording fees are considered expensive; 4) The role of the government in providing an understanding of communal intellectual property (CIP) registration is still minimal; 5) communal intellectual property (CIP) registration/recording takes a long time.

One of the communal intellectual property (CIP) is Geographical Indication. Violations due to reputation, quality, and characteristics are the basis for granting Geographical Indication protection to an item. Rights to GI are obtained after the Geographical Indication is registered. However, in practice, this process is not always carried out easily because not all Geographical Indication owners are members of the MPIG. As a result, the community does not receive legal protection, which means that there is a high possibility of violations of the use of Geographical Indication without permission which can harm the Geographical Indication owner.

To resolve communal intellectual property (CIP) disputes, in addition to litigation, it can also be done through a mediation process that must be based on the principle of deliberation and consensus, so that both parties to the dispute can convey their respective wishes, until they reach an agreement, without harming or burdening one of the parties. Mediation is one of the non-litigation dispute resolutions which is carried out by means of alternative dispute resolution (ADR).

Dispute resolution outside the court or alternative dispute resolution such as mediation, has characteristics that are parallel to these needs so that it is very appropriate to be the choice of business actors to resolve disputes in the KIK field. One way to resolve KIK disputes outside the court that can be used as an alternative by business actors is through Bale Mediation as an alternative settlement institution.

Bale Mediation is an alternative dispute resolution institution. Alternative dispute resolution is a form of dispute resolution outside the court based on an agreement (consensus) carried out by the disputing parties either without or with the assistance of a neutral third party. According to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in Article 1 number 10, alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert assessment. Bale Mediation has 3 (three) main functions, namely recognizing the strengthening of customary institutions in the village, reducing the space for problems in the community, and carrying out mediation of civil cases. This Bale Mediation is at the village, sub-district or district and city levels. Each district on Lombok Island in particular has its own regional regulations such as in Mataram City which is regulated in Mataram Mayor Regulation No. 40 of 2019 concerning the establishment of a Mediation Center, while in East Lombok Regency it is regulated by East Lombok Regent Regulation Number 37 of 2019 concerning the Establishment of a Mediation Center and West Lombok Regent Regulation Number 47 of 2019 concerning the Establishment of a Mediation Center. The Mediation Center is tasked with creating a database of certified and uncertified mediators, facilitating socialization, education, research, training, seminars, workshops, workshops on mediation, compiling and establishing the Standard Operating Procedure (SOP) for the Mediation Center. In addition, the Mediation Center is tasked with submitting reports on the implementation

of its duties and authorities, assisting in the implementation of dispute resolution carried out by institutions that carry out mediation functions, and coordinating with institutions and agencies related to the implementation of its duties.

The authority of the provincial Mediation Center is to strengthen the capacity of institutions that carry out mediation functions in the community, increase the capacity of mediators, coordinate with institutions that carry out mediation functions, and resolve disputes through mediation.¹⁰

The absolute authority of the mediation center is in the settlement of civil disputes including all customary civil disputes, general civil disputes and religious civil disputes as well as in criminal cases. The types and qualifications of criminal cases that can be mediated will be regulated in the Memorandum of Understanding between the Governor and the Chief of Police, the High Prosecutor and the Chief Justice of the High Court.¹¹

The procedure for resolving civil and criminal disputes begins with the desire of the disputing parties to resolve their dispute through mutual deliberation through the Mediation Center and ends with the creation of a memorandum/deed of peace for dispute resolution by the Mediation Center.¹²

The result of the dispute resolution process through mediation, which is carried out by Bale Mediation, is the existence of an agreement or peace agreement that both have evidentiary value and are binding on the parties. However, it does not yet have definite legal force as is the case with a court decision that has permanent legal force. The agreement resulting from mediation at Bale Mediation does not yet have permanent legal force but is only an ordinary contract for the parties.¹³

4. Conclusion

The legal justice system in Indonesia is divided into four judicial environments, namely General (Civil) courts and State Administrative Courts, Religious Courts and Military (Special) Courts. General Courts or Civil Courts are courts that resolve civilian cases. Bale Mediation is an institution that carries out the functions of mediation, coaching and coordination in the implementation of mediation in the community in accordance with local wisdom. Bale Mediation is not part of the state judiciary but rather an institution that resolves disputes outside the court.

The result of dispute resolution at Bale Mediation is in the form of an Agreement. The agreement resulting from mediation at Bale Mediation does not yet have permanent legal force but is only an ordinary contract for the parties. The peace agreement resulting from mediation outside the court only obtains the status of a peace deed after the parties

¹⁰ Mualifah, M. Jailani, M. Faisal. "Peranan Bale Mediasi Dalam Menyelesaikan Perkara Pidana". *Jurnal Pengabdian Magister Pendidikan IPA* 6 no. 3 (2023): 754

¹¹ Haeruman Jayadi. "Kewenangan Bale Mediasi Dalam Penyelesaian Sengketa Pidana Dan Perdata Berdasarkan Peraturan Daerah NTB Nomor 9 Tahun 2018 Tentang Bale Mediasi." *Jurnal Kompilasi Hukum* 7 No. 1, (2022): 65

¹² *Ibid.*, h.65

¹³ Dedy Mulyana. "Kekuatan Hukum Hasil Mediasi di Luar Pengadilan Menurut Hukum Positif". *Jurnal Wawasan Yuridika* 3 No. 2 (2019): 45

with or without the assistance of a mediator file a peace lawsuit through the Commercial/District Court.

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