



Faculty of Applied and Creative Arts

Iban's Pua Kumbu: Geographical Indications Towards Intellectual Property

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Iban's Pua Kumbu: Geographical Indications Towards Intellectual Property

Siti Noor Aisyah Binti Ishak

A thesis submitted

In fulfillment of the requirements for the degree of Master of Arts

(Arts Management)

Faculty of Applied and Creative Arts
UNIVERSITI MALAYSIA SARAWAK

2021

DECLARATION

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ABSTRACT

This research addresses the issue of applying suitable In IP protection for the Iban traditional textile known as Pua Kumbu. The thesis conducted a case study on pua kumbu with the relation with GI from the perspective of Malaysia framework. This exploratory research was done mainly based on qualitative methodology where the primary data gathered using interviews, observations, and document reviews. Besides that, selected literature including other relevant documents and data from personal observations, derived previous research were examined to provide insights on the subject and to help achieving research objectives. The study found that, IP protection specifically GI was important for preserving and sustaining pua kumbu mainly for commercialization. This was because the major potential benefits that can be gain from this regime is from the socio-economy aspect. Those benefits not just for the artisan but also the Iban community in Sarawak. The state government play vital role in the successful registration for potentially Sarawak Pua Kumbu GI. It was found also higher education institution play important role in conducting research for gaining IP protection for traditional handicrafts. The protection for TCEF and TK is not established yet in our country, so GI is the most suitable tool for time being when compared to other IP mechanism. The collective and perpetual protection duration characteristic of GI enable it to be the best sustainability option for Iban's traditional pua kumbu.

Keywords: Intellectual property, geographical indications, preservation, pua kumbu

Pua Kumbu Iban: Petunjuk Geografi Ke Arah Harta Intelek

ABSTRAK

Penyelidikan ini menangani isu penggunaan perlindungan IP yang sesuai untuk tekstil tradisional Iban yang dikenali sebagai Pua Kumbu. Tesis ini menjalankan kajian kes mengenai pua kumbu dengan hubungan dengan GI dari perspektif kerangka Malaysia. Penyelidikan penerokaan ini dilakukan terutamanya berdasarkan metodologi kualitatif di mana data primer dikumpulkan menggunakan temu ramah, pemerhatian dan tinjauan dokumen. Selain itu, literatur terpilih termasuk dokumen dan data lain yang relevan dari pengamatan peribadi, penelitian sebelumnya yang diteliti diperiksa untuk memberikan pandangan mengenai subjek dan untuk membantu mencapai objektif penelitian. Kajian mendapati bahawa, perlindungan IP khususnya GI penting untuk memelihara dan mengekalkan pua kumbu terutama untuk pengkomersialan. Ini kerana potensi keuntungan utama yang dapat diperoleh dari rejim ini adalah dari aspek sosio-ekonomi. Makanan itu bukan hanya untuk tukang seni tetapi juga masyarakat Iban di Sarawak. Kerajaan negeri memainkan peranan penting dalam pendaftaran yang berjaya untuk berpotensi GI Pua Kumbu Sarawak. Didapati institusi pendidikan tinggi juga memainkan peranan penting dalam menjalankan penyelidikan untuk mendapatkan perlindungan IP untuk kraftangan tradisional. Perlindungan untuk TCEF dan TK belum ada di negara kita, jadi GI adalah alat yang paling sesuai untuk masa ini jika dibandingkan dengan mekanisme IP lain. Karakteristik jangka masa perlindungan kolektif dan berterusan GI membolehkannya menjadi pilihan kelestarian terbaik untuk pua kumbu tradisional Iban.

Kata kunci: *Harta intelek, petunjuk geografi, pemeliharaan, pua kumbu*

TABLE OF CONTENTS

	Page
DECLARATION	i
ACKNOWLEDGEMENT	ii
ABSTRACT	iii
<i>ABSTRAK</i>	iv
TABLE OF CONTENTS	v
LIST OF TABLES	x
LIST OF FIGURES	xi
LIST OF ABBREVIATIONS	xiv
CHAPTER 1: INTRODUCTION	1
1.1 Study Background	1
1.2 Problem Statement	4
1.3 Research Questions	5
1.4 Research Hypothesis	6
1.5 Research Objectives	6
1.6 Scope of Study	6
1.7 Significance of Study	7
1.8 Conceptual Framework	9
1.9 Summary	10

CHAPTER 2: LITERATURE REVIEW	12
2.1 Traditional Handicraft	12
2.2 Iban’s Cultural Heritage: Pua Kumbu	12
2.2.1 Brief History	14
2.2.2 General Characteristics and Production Process	15
2.2.3 Pua Kumbu Production Process	16
2.2.4 Pua Kumbu Traditional Motifs	17
2.2.5 Changes of Pua Kumbu Significance	19
2.3 Intellectual Property Protection	20
2.3.1 Potential Intellectual Property Within Traditional Handicraft	22
2.3.2 Intellectual Property and Cultural Heritage Preservation	24
2.3.3 Intellectual Property Protection for Traditional Handicraft	25
2.4 Geographical Indication Protection for Traditional Handicraft	27
2.4.1 GI International Framework	28
2.4.2 Geographical Indication in Malaysia	35
2.5 Summary	37
CHAPTER 3: RESEARCH METHODOLOGY	39
3.1 Research Methodological Framework	39
3.1.1 Identification Stage	39
3.1.2 Development Stage	39

3.1.3	Application Stage	40
3.1.4	Refinement Stage	40
3.2	Research Methodology Design	41
3.2.1	Philosophy of Study	43
3.2.2	Approaches of Study	46
3.2.3	Research Strategies	47
3.2.4	Research Choice	48
3.2.5	Time Horizon	49
3.2.6	Data Collection and Data Analysis	49
3.3	Data Collection Method	49
3.3.1	Interviews	51
3.3.2	Observations	54
3.3.3	Documents	55
3.4	Instrument of Study	56
3.5	Data Analysis Method	58
3.5.1	Content Analysis	58
3.5.2	Cognitive Mapping	60
3.6	Ethical of Study	60
3.7	Limitation of Study	61
3.8	Summary	62

CHAPTER 4: RESEARCH FINDINGS ANALYSIS	64
4.1 Suitable IP Protection Through Geographical Indication for the Iban Traditional Handicraft Against Foreign Exploitation	64
4.1.1 Difficulties to Register Pua Kumbu for IPs Protection	68
4.2 Provisions Aspect Needed for Traditional Handicraft Product To Be Protected Under Malaysian GI Framework and Intellectual Property	76
4.2.1 GI Application for Pua Kumbu	76
4.2.2 Formality Examination	85
4.2.3 Advertisement	86
4.2.4 Certification	86
4.2.5 Malaysia's GI Logo	88
4.3 Strategies to Preserve and Sustain the Craft of Pua Kumbu Locally and Internationally	90
4.3.1 Intellectual Property Management	90
4.3.2 GI Product Commercialization	96
4.4 Summary	107
CHAPTER 5: DISCUSSION AND CONCLUSION	109
5.1 Discussion of Findings	109
5.1.1 Is GI The Only IP Mechanism Suitable to Protect the Iban's Pua Kumbu for It to be Safeguard as Cultural Heritage?	109
5.1.2 How Can Traditional Handicraft be Protected Using IP's According	

to Our Nation's Legal System?	111
5.1.3 Is There Any Significance That Can Be Gain from Suitable IP Mechanism for Preservation of Iban's Culture Heritage Product Like Pua Kumbu?	113
5.2 Reviewing the Analytical Framework	114
5.3 Recommendations for Future Studies	116
5.4 Recommendations for Future Practice	116
5.5 Conclusion of study	118
REFERENCES	119
GLOSSARY	129
APPENDICES	131

LIST OF TABLES

	Page
Table 1.1 Components Of IP Protection in Malaysia Framework Based on MyIPO Website	4
Table 2.1 Potential IP Assets in Handicrafts Potential IP Assets in Handicrafts (WIPO Seminar and Publication, 2014 & 2016)	24
Table 3.1 Contrast Implication of Positivism and Social Constructionism (Easterby - Smith, 2003)	44
Table 3.2 Research Objective Relation with Philosophy of Study	46
Table 3.3 Sources of Data	49
Table 4.1 Current List of Traditional Textiles That Have Been Registered and Still in Process* (Source: MyIPO, Sarawak Branch)	67
Table 4.2 “World Ikat Textiles – Ties That Bind” in Year 2017	75
Table 4.3 Selected Traditional Pua Kumbu Motifs Possible for GI Protection	79
Table 4.4 Distinction Characteristics of Pua Kumbu Made in Sarawak (Malaysia and Ikat from Kalimantan (Indonesia)	85
Table 4.5 TCEF Committee’s Member Until 2014	95
Table 5.1 Comparison of Potential IP Assets for Pua Kumbu Protection	110
Table 5.2 Intellectual Property Management (GI) for Pua Kumbu	113

LIST OF FIGURES

	Page
Figure 1.1 Conceptual Framework "Cultural Diamond" (Adapted from Griswold, 2013)	9
Figure 2.1 Sarawak Map, Regions Where the Iban Performs Weaving (Linggi, 2001)	14
Figure 2.2 Design Layout of Traditional Pua Kumbu (Chalmers,1993)	15
Figure 2.3 Stages of Design Creation in Pua Kumbu Process from Left to Right (Chalmers, 1993)	16
Figure 2.4 The Iban Cosmology (rantauandau.blogspot.my)	17
Figure 2.5 Basic Principles of IP (Arief, 2016)	22
Figure 2.6 Different Definitions of Geographical Indicators (Addor & Grazioli 2002)	29
Figure 2.7 Taxonomy of Different Types of Products Linked to A Territory (Belletti & Marescotti, 2006)	30
Figure 2.8 Procedures for GI Registration (Kulkarni & Konde, 2011)	35
Figure 2.9 Geographical Indication Per Malaysian State and Type Goods Registered Data Taken from Myipo Until July 2014 (OECD Report, 2015)	36
Figure 3.1 The Methodological Framework (Siti Uzairiah, 2016)	41
Figure 3.2 Research Onion (Adapted from Saunders et al., 2007)	43
Figure 3.3 Kuching City Map	55
Figure 4.1 The Main Threat for Traditional Pua Kumbu Especially Now Its Motif can be Easily Produce in Mass-Production by Using Printing Technology	64

Figure 4.2	Indonesia's Registered GI Ikat Textile (<i>Pengkalan Dataintelektual</i> Indonesia Website)	72
Figure 4.3	GI Classification of Products	76
Figure 4.4	Pua Kumbu Main Quality Criteria	78
Figure 4.5	Raw Material to Produce Pua Kumbu from GI Workshop 2014 (*Yarn Need Mordant Bath)	84
Figure 4.6	Fees for GI Protection	86
Figure 4.7	GI Malaysia Logo	88
Figure 4.8	GI Registration Flow Chart	89
Figure 4.9	Sarawak Intellectual Property Management Process	91
Figure 4.10	Certification for Quality of Weaving	92
Figure 4.11	Pua Weaver Still Maintaining Using Traditional Weaving Skills and Tools (Backstrap Looms)	93
Figure 4.12	Registrable IP and Non-Registrable IP In Malaysia	94
Figure 4.13	IP can be Used Together with NHA to Safeguarding Traditional Expressions and Knowledge	96
Figure 4.14	Authentic Traditional Pua Kumbu Sold Without Using Any Formal Tags	98
Figure 4.15	Product Like Pua Kumbu can be Increase Its Value with Branding Meaning Having Its Own Trademark.	99
Figure 4.16	With Each Purchase of Pua Kumbu, The Customer Will Be Given a Card with Information About the Pua Kumbu.	100
Figure 4.17	Rumah Gareh's Website Page (http://www.rhgareh.org)	100

Figure 4.18	Exhibition of Pua Kumbu Exclusively from Rumah Gareh in Kapit, Sarawak	102
Figure 4.19	Registered Trademark Logo That Belong to Rh. Gareh Located in Kapit, Sarawak	103
Figure 4.20	Map of Rumah Garie Longhouse Located in Kapit, Sarawak Coordinates: 1.9399365, 113.2820859 (Google Map)	104
Figure 4.21	Pua Kumbu with Traditional Design Displayed in the Exhibition Have Its Own Folklore Story	104
Figure 4.22	Pua Kumbu That Made from The Natural Dye of <i>Akar Landak</i> (New Material)	107
Figure 5.1	The Overall Process of GI Registration and Management.	112
Figure 5.2	Research Framework	116

LIST OF ABBREVIATIONS

AIPPI	Association Internationale pour la Protection de la Propriété Industrielle
AO	Appellation of Origin or Appellation d'Origine
AOC	Controlled Appellation of Origin or Appellation d'Origine Contrôlée
CoP	Code of Practice
DIKN	Dasar Industri Kreatif Negara
GI	Geographical Indication
GIA	Geographical Indication Act
GIPs	GI products
IP	Intellectual Property
SITRC	Sarawak Information Technology Resource Council
IPM	Intellectual Property Management
MHDC	Malaysia Development Corporation
MyIPO	Malaysia Intellectual Property Organizaion
NHA	National Heritage Act
NGO	Non-Governmental Organization
OECD	The Organisation for Economic Co-operation and Development
RGIs	Registered GIs
RGIsP	Registered GI products
SEA	Southeast Asia

TCE	Traditional Cultural Expression
TCEF	Traditional Cultural Expression & Folklore
TK	Traditional Knowledge
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property Rights
TM	Trademark
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

CHAPTER 1

INTRODUCTION

1.1 Study Background

Geographically, Malaysia is almost as diverse as its culture 11 states and two federal territories (Kuala Lumpur and Putrajaya) form Peninsular Malaysia which the South China Sea separates from East Malaysia, which includes the two states (Sabah and Sarawak on the island of Borneo) and a third federal territory, the island of Labuan. About half of Sarawak's residents, the largest indigenous group, consists of the Sea Dayaks or Ibans people. There are many types of traditional Iban's handicrafts. But in this study, the main focus of traditional handicrafts is the pua kumbu. It is a woven, traditional textile using the technique of tie and dye. Although there are many types of other handicrafts produced by the Iban, pua kumbu is the most well-known tangible expression associated with them locally and internationally. The pua kumbu also consider as intangible expression. It is essential to preserve this tangible heritage, and one of the ways is commercialization.

Legal protection of intellectual property related to safeguarding traditional handicraft. Traditional handicraft is one of the vital elements within a cultural heritage that needs to be preserved and protected for its existence within the globalization environment. Intellectual property has suggested as a way to safeguard traditional handicrafts. George (2010), taken from Brown (2003:55), "Many lawyers and activist believe that intellectual property law holds the key to heritage protection. This study commenced exploring the intellectual property protection of traditional textile handicrafts from Sarawak, known as Pua Kumbu. Preservation of traditional handicrafts like pua kumbu is essential because it is an important cultural heritage in this country, particularly for the Iban people in Sarawak. There are many

types of traditional Iban's handicrafts. But in this study, the main focus of traditional handicrafts is the pua kumbu. It is a woven, traditional textile using the technique of tie and dye. Although there are many types of other handicrafts produced by the Iban, pua kumbu is the most well-known tangible expression associated with them locally and internationally. The pua kumbu also consider as intangible expression. It is essential to preserve this tangible heritage, and one of the ways is commercialization. The effort to commercialize traditional handicrafts is according to the recommendation stated by the United Nations Educational, Scientific and Cultural Organization in their website article entitled "safeguarding without freezing."

"To be kept alive intangible cultural heritage must be relevant to its community, continuously recreated and transmitted from one generation to another" (Intangible Cultural Heritage, UNESCO)

Nowadays, traditional handicrafts production considered a vital contribution to the creative industry. It has become an important industry in some countries such as India and African countries. This industry can produce income for the land and help, especially for the rural community's socio-economic that usually depended on agricultural activity. As for our country, there has been a creative industry which the handicraft also considered inside it as in the national creative policy or *Dasar Industri kreatif Negara* (DIKN). When talking about the creative industry, there will be associated with intellectual property. As the former prime minister of Malaysia during the National Intellectual Property Day 2005 said:

"Intellectual Property is the current economic spinner."
(Y.A.B. Dato' Seri Abdullah Hj. Ahmad Badawi)

Several years later, there has been a discussion on the potential role of intellectual property (IP), especially the Geographical Indication (GI), to protect Iban's traditional handicrafts. Based on our country legal framework, many types of potential IP as a tool for the protection of handicraft like pua kumbu. Malaysia was one country members that joined

World Intellectual Property (WIPO) in 1989. This action has caused support to IP development, thus establishing the Malaysia Intellectual Property Organization (MyIPO). This country is also actively involved in WIPO's treaties and WTO agreement, for example, the TRIPs Agreement. Traditionally this country is commonly known to have a negative image as a hub of piracy. Azmi (n.d.) made a study report about our country's recent IP, focusing on the TRIPS Agreement. From her study, she found that in the year 2000, the new millennium's beginning marked the development of significant alignment of the Malaysian intellectual property system to the global standards. There was proof that Malaysian standards are even higher than those mandated by TRIPS (Azmi, p. 569). The effects of this particular international agreement creating four new IP law: i) Geographical Indications Act 2000, ii) Layout Designs of Integrated Circuits Act 2000, iii) Optical Piracy Discs Act 2000. So, what is the most suitable intellectual property to protect traditional handicraft like pua kumbu?

This protection is from the legal framework of our country intellectual property framework. The intellectual property in Malaysia is governed by the Malaysian Intellectual Property Organization or known as MyIPO. MyIPO role had been established as a statutory body to implement intellectual property in our country according to the intellectual property corporation of Malaysia Act 2002 (Act 617). Overall there are six MyIPO office branches nationwide, including one in Sarawak. All IP applications and registrations for protection in our country made in Malaysia intellectual property organization or MyIPO. Besides MyIPO, there was also specifically from the Sarawak state government that was also helping manage the intellectual property under the chief minister's department of Sarawak. From the legal framework of Malaysia stated by MyIPO, there are three branches of protection. The three units are industrial property, copyright and common law.

Table 1.1: Components of IP Protection in Malaysia Framework Based on MyIPO Website

Components IP (MyIPO)		
Industrial property	Copyright	Common law
<ul style="list-style-type: none"> • Patent • Trademark • Industrial design • Geographical indication • Integrated circuit layout design 		<ul style="list-style-type: none"> • Trade secret • Confidential information • Passing off

1.2 Research Problems

Discussion of the problems that lead to this study of pua kumbu relation with IP protection mainly because of several threat factors. All those threat factors can be divided into an external and internal situation that causes the declining of this traditional textile. For the internal aspect, pua kumbu well-known as the Iban most valuable and sacred material cultural heritage. The Iban people do not have recorded history and pua kumbu as knowledge recorded, including their myth and stories. Heirloom shared through generations. The researcher has several valuable artefacts of pua kumbu cloth beside the ceramic and traditional musical instrument such as metal gong. Linggi (2001), in her book entitled "Ties that bind", the Iban There also threat losing value as the Iban identity. Change of significance more towards monetary value. The traditional know-how or knowledge, especially traditional weaving skills.

From the external situation view, the main threats come from commercialization development in this globalized world. Globalization and advancement of technology have affected the way people live in urban areas and Sarawak's remote rural regions, especially the Iban people. There has been increasing concerns about commercialized traditional

handicraft illicitly exploited in Sarawak, especially the Iban's textile handicraft called pua kumbu. An article from The Borneo Post online newspaper dated March 31, 2013, really intriguing my interest in this study. The article was entitled "Sarawak handicrafts: Preserving a heritage threatened by extinction". This article claimed that most of the handicrafts products sold in Kuching city, for example, souvenir shops in the area of arts and crafts centre and the 'Main Bazaar', were not authentic Sarawak crafts, mostly Indonesian made. The main danger for this traditional Iban textile was the influx of machine-woven ikat textiles from our neighbouring country, sold then at a much lower price. The problem of this influx can be known as "Tragedy of the commons", stated by Azmi (2012). An article in the local newspaper The Star, dated June 7, 2015, discusses pua kumbu being on the brink of extinction requiring urgent preservation effort. The question of protecting traditional handicrafts is also addressed by Azmi et al. (2015), focusing on Misappropriation and Dilution of Indigenous People's Cultural Expression through the Sale of Their Arts and Crafts: Should More Be Done? In their study, they suggested that IP should utilize as the solution.

1.3 Research Questions

From the previous problem, statements there will be a few questions of the study or research arose. The research questions are:

- i. Is GI the only IP mechanism suitable to protect the Iban's pua kumbu for it to be safeguard as cultural heritage?
- ii. How can traditional handicraft be protected using IP's according to our nation's legal system?