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PERSONAL DATA PROTECTION IN DIGITAL ERA

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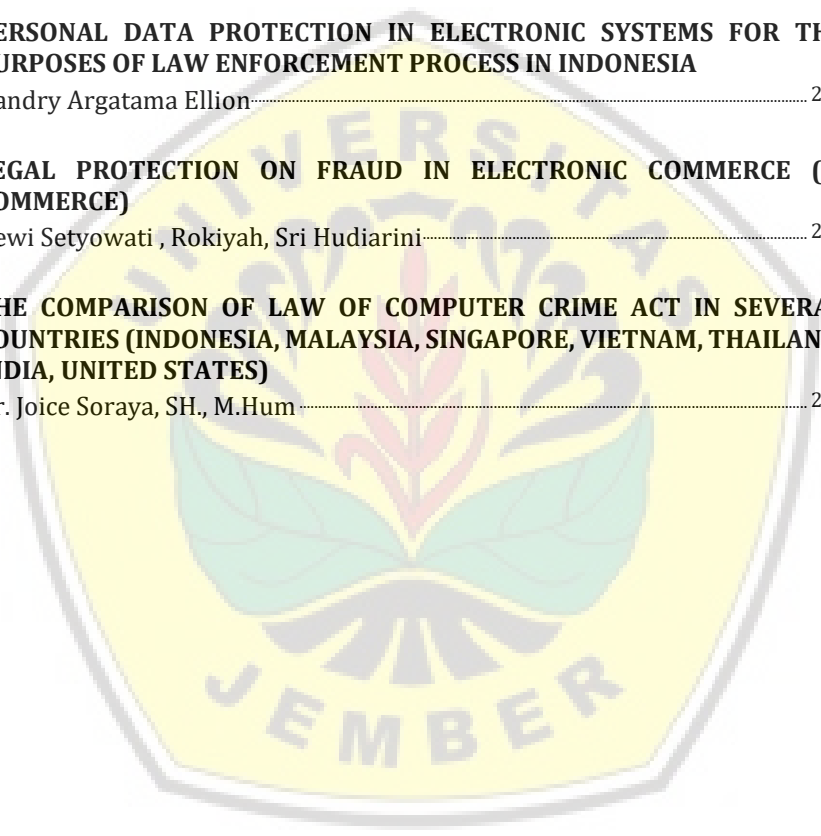
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Protection of Traditional Knowledge in Digital Database

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ABSTRACT

ABSTRACT

Indonesia is a country with a lot of potential for traditional knowledge. But at the present time the traditional knowledge in Indonesia are widely used by developed countries. This condition encourages Indonesia to continue to seek protection of traditional knowledge in international law and to create a database to provide protection to the intellectual property of traditional societies and natural resources in Indonesia. How does Indonesia provide traditional knowledge protection?

Type of Paper: Empirical/ Review

Keywords: Protection, Traditional Knowledge

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1. Introduction

INTRODUCTION

Issues related to Traditional Knowledge have received increasing attention in global intellectual property arena, including in the world of intergovernmental organizations and civil society.¹²¹ The term of “traditional knowledge” for further called Traditional Knowledge refers to knowledge, possessed by Indigenous people, in one or more societies and in one or more forms, including, but not limited to, art, dance, music, medicines and folk remedies. Historically recorded, Indigenous and traditional people really have made major contribution to the enhancement and conservation of the world’s biodiversity.¹²² Mostly, Traditional Knowledge comprises of knowledge which has been developed in the past, but it which still continues to be developed¹²³

As the icon used by World Intellectual Property Organization (WIPO) states that “*Traditional Knowledge is our identity, our future*”. Therefore, the discussion of Traditional Knowledge cannot be separated with Indigenous people item. Traditional Knowledge is often associated with preservation of plant genetic resources and enrichment of plant genetic resources from the widely use of modern scientific and technological experiment.¹²⁴ The term of Traditional Knowledge is very broadly and still being debated of it definition in international level. Nevertheless, there are several definition provided by international legal

¹²¹ Hanu Wager, *Biodiversity, Traditional Knowledge, and Folklore: Work on related IP mater in the WTO*, 2008, pp. 215.

¹²² Darrell A. Posey, *Commodification of the sacred through Intellectual Property Rights*, Elsevier Science Ireland Ltd. *Journal of Ethno Pharmacology* 83, 2002, pp. 3-12

¹²³ Carlos M Correa, *Traditional Knowledge and Intellectual Property: Issues and Adoptions surrounding the Protection of Traditional Knowledge (a discussion Paper)*, Published by the Quaker United Nation Office (QUNO), Geneva, 2001, pp. 4.

¹²⁴ Jane G. Payumo, Raymond Jussaume and Howard D. Grimes, *Protecting and Preserving Traditional knowledge and Plant Genetic Resources: is ASEAN there yet?*, 2009, pp.27

instrument and International organization. As defined by the Convention on Biological Diversity (CBD), Traditional Knowledge is referred to as: The knowledge, inventions, and practices of indigenous and local communities around the world, developed from experience gained over the countries and adapted to the local culture and environment, and transmitted orally from generation to generation. It tend to be collectively owned and take several forms from stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language and agricultural practices, including the development of plant species and animal breeds.¹²⁵

WIPO defined Traditional Knowledge, are: Traditional Knowledge is tradition based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names, and symbols, undisclosed information, and, all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic field.¹²⁶ As the result of cultural creation, the protection of Traditional Knowledge generally, and in traditional medicine is restricted just to the indigenous people, who have the similar character of cultures.¹²⁷ Traditional Knowledge is not only has economic value, but actually it also has moral, spiritual, and magical values that owned by indigenous people who are automatically as a state's entity and sovereignty.

Recently, western science has become more interested in Traditional Knowledge and realizes that Traditional Knowledge may help to find useful solution to the current problems, sometimes in combination with "modern scientific and technological knowledge".¹²⁸ Recent years, the demand for traditional medicine has grown up significantly. The world

¹²⁵ Convention o Biological Diversity, Art. 8 J, June, 5, 1992, 1760 U.N.T.S. 79. Available at <http://www.cbd.int/>

¹²⁶ Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore. Available at <http://www.wipo.int/tk/en>

¹²⁷ Moh. Saleh, Legal Protection of Traditional Knowledge in Madura (case study of Protection of Jamu Madura), Thesis of Master of Law at University of Diponegoro, Semarang, 2009, pp. 38

¹²⁸ Carlos M Correa, Op.Cit., pp. 3.

market for herbal medicine has reached, according to one estimate, US \$45 billion, with annual growth rate of between 5% and 15 %. While for China, the leading country in this field, estimates that TM generated income of about \$ 5 billion in 1999 from the international and \$1 billion from domestic market.¹²⁹

In 2006, the ASEAN region had a human population of about 560 million, a total area of 4,5 million squares kilometers, a combined gross domestic product of US \$ 1100 billion and a total trade of US \$ 1400 billion.¹³⁰ While the recent world population approaching 7.3 billion by 2020, demand in priority area such as food, shelter, and health is on an exponential trajectory.¹³¹ With the increasing of that population number automatically will raising the number of using of Traditional Knowledge for human being of various purposes. It also potential raises number of dispute among countries especially between developed and developing countries. Several cases associated with enhancing Traditional Knowledge using modern biotechnology and then privatizing the resultant genetic material have attracted international attention.¹³² Beside that nowadays, Traditional Knowledge also involve traditional cultural expressions like dances, folklore and etc. Example, current cases occurred between ASEAN member countries that involved between Malaysia and Indonesia regarding Batik motive, Reok Ponorogo dance, and Pendet dance.

With the huge number of potential dispute emerge in relation to Traditional Knowledge and Genetic Resources, envisage many parties concern discuss about its protection. Experts highlight a number of reasons

¹²⁹ Carlos M Correa, *Ibid.*, pp. 4.

¹³⁰ ASEAN (2009) *Overview Association of South East Asian Nations*. Available at <http://www.aseansec.org>

¹³¹ Prabuddha Ganguli, *Intellectual Property Rights, Imperatives for Knowledge Industry*, 2000, pp.167

¹³² Jane G. Payumo, Raymond Jussaume and Howard D. Grimes. *Op.Cit.*, pp.26

why the protection of Traditional Knowledge is important.¹³³ Various international legal instruments for environmental have recently developed and adopted provisions, framework, and decisions relevant to Traditional Knowledge.¹³⁴

2. Literature Review

As result of a cultural creation, the protection of Traditional Knowledge (especially in Traditional Medicine) is limited for Indigenous people that have similar characters of culture.¹³⁵ In the context of Indonesia such indigenous people refers to the groups of community based on tribe, such as batak, Bali Jawa, Bugis, Minangkabau, sasak, Madura, and so on that approaching over 500 tribes.

State until now just provides basic recognition declaratively toward indigenous people traditional cultural expression as stated under Indonesian constitution. That recognition is reflected at section 18 B of Republic of Indonesia constitution that amended at second amendment state that: Subsection (1) *State recognizes and respects special regional governing that stated by the act*; Subsection (2) *State recognised and respect indigineous people and its tarditional rights as far as still exist and proper with current community development and the principle of the sate of the republic of Indonesia as stated under constitution.*

¹³³ United Nation conference on Trade and development, 2004; Sophia Twarog, Promila Kapoor (Editors), *Protecting and Promoting TK: System, National Experiences and International Dimention*, New York and Geneva, 2004, pp.XV

¹³⁴ Gonzalo Oviedo, Aimee Gonzales, and Luisa Maffi, *The Importance Of Traditional Ecological Knowledge, And Ways To Protect It*, 2004, pp.75; Sophia Twarog, Promila Kapoor (Editors), *Protecting and Promoting TK: System, National Experiences and International Dimention*, New York and Geneva, 2004, pp.61-63

¹³⁵ Moh. Saleh, *Loc.Cit* pp 38-39

Beside that in Section 32 of Indonesia constitution states that *"The government develop Indonesia national cultural"*, and in part of explanation of constitution states that *"the effort of cultural must going on the advance civilization, culture, with not rejected the new values/materials from foreign cultural that can develop or enrich own nation cultural and increase the dignity/self esteem of Indonesia people"*. Thence, on Section 28 I Sub-section 3 of constitution states that: *"Culture identity indigenous people rights are respected in line of the current period development and civilization"*.¹³⁶ And last as stated on Section 32 Sub-section (1) of constitution states that, "State develops Indonesia national culture in the mid of global civilization with guarantee community freedom in protecting and developing their culture values".

Although constitution of Indonesia has provided recognition and respect to the existence of indigenous people and its traditional cultural expression, however those are still just stipulated declaratively and abstractly. Those surely are not enough in providing protection to the Indigenous people and knowledge that owned by them. Therefore, it is still needed many legal provisions at national and regional level as the advance provision to protect Indigenous People and Traditional Knowledge obviously in the field. The logical consequences emerge as the result caused of recognition and respect of state toward indigenous people through constitution as stated above is emerging the obligation of state in providing protection that is reflected by available any kind of legislations and legal provisions related to the issues of indigenous people and its rights. Nevertheless, till now has no legislations and legal provisions that specifically setting up indigenous people and their rights including Traditional Knowledge and local wisdom that owned. Indonesia also has not ratified ILO convention No.169 regarding indigenous people.

The consideration of Government of Indonesia does not ratified ILO convention is because emerging many definition of indigenous people term that assumed by each region in all over Indonesia. To avoid that

¹³⁶Section 28 I sub-section 3 of Indonesia constitution of 1945

various definition that possible create dispute in the country, the government decide not ratified soon that ILO convention, but the Government of Indonesia is going to create the legal provisions that specifically covered indigineous people that defined by the similar tought in all over region area in Indonesia.

Nowadays Indonesia has no specific legislation about traditional knowledge, also indigenou people and it creations. However, the setting up of traditional knowledge and traditional culture expression during this time are covered under Copyrights Act No. 19 of 2002 and, while genetic resources and bio-diversity issue and the result of it management such as traditional medicine are covered under CBD framework as it has been ratified by the government of Indonesia into national legislation through Act No. 5 of 1994 about ratification of UNCBD and also under Patent Act Number 14 of 2001. Beside that the setting up of traditional knowledge and traditional culture expression also for temporary time are covered under Trademark Act Number 15 of 2001, especially for geographical indication and Origin Indication issue, Industrial Design Act Number 31 of 2000, and Plant Variety Protection Act No. 29 of 2000.

The government of Indonesia has though and is reviewing about the importance of traditional knowledge, artistic, and traditional culture expression protection under sui generis act that specifically enacting those issue. Therefore, since 2008 has been drafted Act (bill act) regarding “the Protection and Development of Traditional Knowledge and Traditional Cultural Expressions and also Genetic Resources Act”. Until now, those two drafts act are not endorsed yet by parliament. However, those drafts have been prioritized to be discussed at national legislation agenda of 2010-2014. It means that Indonesia at the latest on 2014 will have the sui generis act that cover TK issues, it is “*Protection and management of Traditional knowledge intellectual property and traditional culture expression Act and also Genetic Resources Act (GRA)*”.

As part of commitment in protecting Traditional Knowledge and Genetic resources as the source or inspiration of traditional knowledge, the government of Indonesia's has ratified some international conventions into the national legislations and provisions such as Act No. 5 of 1994 regarding ratification of the United Nation Convention on Biological Diversity (CBD), Act No. 7 of 1994 regarding Ratification of Agreement Establishing the World Trade Organization (including TRIPS Agreement), Act No. 21 of 2004 regarding Ratification of Cartagena Protocol on Bio-safety to the Convention on Biological Diversity. The idea to provide the protection for TK in Indonesia actually has done before Indonesia ratified UNCBD in 1994 through Act No. 5 of 1994, even farther in the same year when the UNCBD formed in Brazil (Rio de Janeiro), Indonesia also has provided protection for traditional knowledge work through Law No. 5 of 1992 deal with the goods of Cultural (*Benda Cagar Budaya*) and within the Government Regulation (*Peraturan Pemerintah/PP*) Number 10 of 1993 as the Regulation on the Implementation of Law No. 5 of 1992.¹³⁷ Section 1 of Law No. 5 of 1992 mentioned that: "*goods of cultural heritage is a man-made objects, movable or immovable in the form of entity or group, or its parts or their remnants, which was at least 50 (five twenty) years, or represent the distinctive style and represents the style of at least 50 (fifty) years, and is regarded as having significant value for the history, science, and cultures*". And in Section 6 Paragraph (2) of Act No. 5 of 1992, as follows: "*It is an object of cultural heritage cultural heritage: a) Owned or controlled by or is inherited from generation to generation; b) The amount for each type quite a lot and some have been owned by the State*".

Overall, nowadays the Government of Indonesia (GoI) has provided several legal provisions and policies that co-relating to the protection of Genetic resources and Traditional Knowledge are: Copyrights Act (CA) Number 28 of 20014, Paten Act, No. 14 of 2001,

¹³⁷ Goods of Cultural Act of Indonesia, No. 5 of 1992 (tentang Benda Cagar Budaya) and its government regulation No.100 of 1993

Trademark Act, No. 15 of 2001. While in the forest conservation Indonesia also has enacted some legal provisions such as Act No. 5 of 1990 regarding Conservation of Biological Natural Resources and its Ecosystem,¹³⁸ Government Regulation No. 8 of 1999 about The using of Certain Plants and Wild Animals,¹³⁹ Act No. 12 of 1992 regarding the Plantation Breed System,¹⁴⁰ Act No. 29 of 2000 regarding Plant Variety Protection,¹⁴¹ Act No. 18 of 2002 regarding National Research and Development System and Implementation of Science and Technology, Government Regulation No. 21 of 2005 regarding Bio-safety on Genetic Engineering Product.¹⁴²

In addition to the forest conservation issue as part of traditional knowledge protection measures done, Indonesia has also enacted it into the national legislation of forestry act, namely Act No. 41 of 1999 on Forestry, especially in chapter IX regulations governing the Indigenous People, where Section 67 paragraph (1) states that: "*Customary law community as long as it still exist and recognized right to: (a). Collect forest products to meet the needs of daily life of indigenous peoples concerned, (b). Conduct forest management activities on the basis of customary law and not contrary to law, and (c). Getting empowerment in order to improve their welfare*".¹⁴³ Although national legislation through Forestry Act provides a number of rights to indigenous people in doing forest management, but the right of management over the forest area does not mean management without limit. In addition to the Forestry Act No.41 of 1999 also government has enacted government regulation (peraturan pemerintah) No.45 of 2004 about Forest Protection.¹⁴⁴In the context of Aceh, has been

¹³⁸ Indonesia Act No. 5 of 1990 regarding Conservation of Biological Natural Resources and its Ecosystem

¹³⁹ Indonesia Government Regulation (PP/Peraturan Pemerintah) No. 8 of 1999 about The using of Certain Plants and Wild Animals

¹⁴⁰ Indonesia Act No. 12 of 1992 regarding the Plantation Breed System

¹⁴¹ Indonesia Act No. 29 of 2000 regarding Plant Variety Protection

¹⁴² Government Regulation (PP/Peraturan Pemerintah) No. 21 of 2005 regarding Bio-safety on Genetic Engineering Product

¹⁴³ Indonesia forestry Act No. 41 of 1999

¹⁴⁴ Indonesia Act No.45 of 2004 about Forest Protection

enacted Qanun/regional policy No. 14 of 2002 concerning Forestry Province of Nanggroe Aceh Darussalam, in which in Chapter V (Public Participation), Article 39 paragraph (3) states: *"The community is obliged to participate and maintain and protect forest areas from disturbance and destruction, carrying out forest rehabilitation, and may request assistance, services, support to the Government and the Provincial or District Government or any other name, or any other party"*.

The government of Indonesia realizes that those national legal provisions and policies are not enough and can effectively be implemented to avoid bio-piracy and misappropriation of Traditional Knowledge and Genetic resources. A numbers of other uses connected to discussion of misappropriation of local knowledge relate to the images of indigenous people.¹⁴⁵ The relevant issue relate to unauthorized use of indigenous symbols for commercial use as occurred in which Native American words and symbol used without consent by sports team.

Therefore, the Government inserted the mechanism of Prior Inform Consent (PIC) into several national legislations as the preventive measures such as taken under Copyrights Act Number 19 of 2002, particularly at Section 10, Sub-section (3): *"To announce or copy those creations as stated by sub-section 2 for non Indonesia citizenship must getting inform consent from related government agency"*.¹⁴⁶ The issue of PIC is not new event to the patent regime, which in the case of joint inventors and employee invention requires evidence of their consent for the grant of paten.¹⁴⁷ Event, making this requirement compulsory in the case of biological invention related to Traditional Knowledge therefore is

¹⁴⁵ Olufunmilayo B. Arewa, *TRIPs and Traditional Knowledge: Local Community, Local Knowledge, and Global Intellectual Property Frameworks*, 2006, pp.178.

¹⁴⁶ Indonesia Copyrights Act Number 28 of 2014

¹⁴⁷ Yousaf Ishaq Khan, *Traditional Knowledge, Genetic Resources and Developing Countries in Asia: The Concerns*, Wake Forest Intellectual Property Law Journal, Vol. 8, 2007-2008, pp. 91.

not a demand alien to patent law.¹⁴⁸ According to the principle of PIC, Traditional Knowledge holders should be fully consulted before their knowledge is accessed or used by third parties and an agreement should be reached on appropriate systems; they should also be fully informed about the consequences of intended use.¹⁴⁹ For consent, permission and authorization to be genuine, there is a clear need for indigenous people to have access to all the information about the proposed use of their Traditional Knowledge.¹⁵⁰

To avoid the bio-piracy and misappropriation done by other country or un-responsible people, the Government of Indonesia also has adopted the Access Benefit Sharing (ABS) concept (as stipulated on the third objective of Convention on Biological Diversity in 1992) into the national Draft Act regarding “the Protection and Development of Traditional Knowledge and Traditional Cultural Expressions and also Genetic Resources Act”. Benefit sharing a process that follow access (based on PIC) to biodiversity and associated Traditional Knowledge by parties external to the holder community or country.¹⁵¹ CBD acknowledge and recognized the nation sovereign rights over genetic resources and the rights of communities.¹⁵²

Recently, Indonesia government has undertaken several measures to protect national Traditional Knowledge. One of that effort is by documenting of Traditional Knowledge that owned by all tribes in all over

¹⁴⁸ Christopher Haeth and Sabine Weidlich under the Yousaf Ishaq Khan. *Ibid.* pp. 91-92.

¹⁴⁹ World Intellectual Property Organization (WIPO), Intellectual Property and Traditional Knowledge. Available at <http://www.wipo.int>

¹⁵⁰ DR. Matthew Rimmer ,*Legal protection of Indigenous Traditional knowledge and Cultural Expression*, Blame it on Rio: Bio-discovery, Native Title, and Traditional Knowledge, 2003, pp. 14.

¹⁵¹ Yousaf shaq Khan. *Ibid.* pp. 94.

¹⁵² Krishna Ravi Srinivas (2008) *Traditional Knowledge and Intellectual Property Rights: a note on Issues, some solutions and some suggestions*. Vol. 3. pp. 89

Indonesia. Those efforts were done under the responsibilities of Tourism and cultural ministry. Event, Indonesia government through Tourism and cultural ministry has suggested and proposed to the national parliament in the routine coordination meeting to protect national Traditional Knowledge through computerize database as done by India known as Traditional Knowledge Digital Library (TKDL). Such digital database would enable patent office all over the world to search and examine any prevalent use/prior art and thereby prevent grant of such patents and bio-piracy.¹⁵³

3. Research Methodology

4. Results

The legal protection of Traditional Knowledge and Genetic Resources in Indonesia, in addition to recognized and declared under constitution, they also have been protected under any legal provisions and policies of Intellectual property regime and other policies expressly and impliedly as are going to be discussed in detail below:

1. Copyrights Act (CA) No. 28 of 2014.

This act states obviously in term of Traditional Knowledge and traditional culture expression, although that arrangement is not appropriate put under this act, for instance about folklore, as stated on Section 38 Sub-section 2 of CA Number 28 of 2014 define Folklore as follows: "*Folklore assumed as some traditional creations, made by community collectively or individually reflecting cultural and social identity based on standard and values stated verbally or followed generated, including: a. storytelling, poem; b. songs and traditional instrumental music; c. dances, gaming; d. artistic creations such as: painting, picture, carving, mosaic, handicraft, jewelry, clothes and traditional woven*". This act provides the strong stipulation of protection of copyrights for unknown creator. The protection concept used under this legal provision done in form of preventive and

¹⁵³ Carlos M Correa, Op.Cit., pp. 18.

repressive approaches. The preventive approach reflected in Section 10 of Indonesia Copyrights Act No. 28 of 2014 that states that Sub-section:

- (1) *State hold copyrights of pre-history creation, history, and other national cultural goods.*
- (2) *State hold copyrights of folklore and traditional culture creation that is belonging to all people such as story, legend, song, handicraft, choreography, dances, calligraphy, and other artistic creation;*
- (3) *To announce or copy those creations as stated by sub-section 2 for non Indonesia citizenship must getting inform consent from related government agency.*
- (4) *For the further provision regarding copyrights that held by the state as stated in this section, will be cover further by the government decree (Peraturan Pemerintah/PP).*

In addition, preventive protective measures were also seen in Section 11 of Act No. 19 of 2002, that: (1) If a work is not known to the Creator and Creation is not yet published, the State holds the Copyright on it for the sake of the Creator; (2) If a work has been published but are not known to the Creator only contained a pseudonym, the publisher holds the Copyright on it for the sake of the Creator; (3) If a work has been published but do not know the author and/or publisher, the State holds the Copyright on it for the sake of the creator.

While the repressive safeguard against traditional arts in Indonesia there are also the copyright laws of this. Creators or their heirs or copyright holder, which in this traditional art copyright is held by the State, are entitled to file compensation to the commercial court for breach of copyright and asked for the confiscation of objects that announced the creation or propagation results.

In addition to economic rights that owned by the creator, there are also moral rights in the resulting creation. Moral rights are rights inherent in the creator or the actors themselves cannot be removed or deleted for any reason, even though the copyright or related rights have been switched. With regard to moral rights can be seen in Section 24 of Law No. 28 of

2014 states: (1) *The creator or his heirs are entitled to claim copyright holders in order to remain listed in the name of the creators of copyright;* (2) *An invention must not be changed even if the copyright has been transferred to other parties, except with the consent of their heirs in case the creator has died;*(3) *The provisions referred to in Paragraph (2) applies also to change the title and subtitle ; creation, inclusion and change creator name or a pseudonym;* (4) *The Creator retains the right to make a change in his creation in accordance with propriety in the society”.*

In Section 12 states that: *"In this Act-protected Creation is a work in the fields of science, art, and literature, which includes: a) books, computer programs, pamphlets, typographical arrangement (layout) of a published work, and all other written works; b) speech, lectures, speeches, and other works of utterance; c) The props are made for the benefit of education and science; d) a song or music with or without text; e) Dramatic or musical drama, dance choreography, puppet shows, and pantomime; f) With all forms of art such as painting, drawing, carving, calligraphy, sculpture, sculpture, collage, and applied arts; g) Architecture; h) Maps; i) art of batik; j) Photography; k) Cinematography; l) Translation, interpretation, adaptation, potpourri, data bases, and other works resulting from adaptations*

In article 12 can be found two things mentioned obviously regarding traditional/indigenous as indigenous/traditional creations, are song or music with or without text (point d) and art of batik (point i). and also in Section 23 states that: Unless there is another agreement between Copyright Holder and owner of Creation photography, painting, drawing, architecture, sculpture and/or the result of other arts, the owner is entitled without the consent of the Copyright Holder to perform a work in an exhibition to the public or reproduce in a single catalog without prejudice to the provisions of Section 19 and Section 20 if the artwork was a photos. In Section 31 states that: (1) *Copyright on a held or conducted by the State of: a) The copyright in folklore and folk culture*

results that belong together, like the story, saga, myth, legend, chronicle, songs, handicrafts, choreography, dance, calligraphy, and other art work accepted without time limit; b) If a work is not known to the Creator and Creation is not yet published, the State holds the Copyright on it for the sake of the Creator and; c) If a work has been published but do not know the Author and / or publisher, the State holds the Copyright on it for the sake of the Creator. Valid for 50 (fifty) years from the Creation was the first time publicly acknowledged”.

Protection by the State through the Law Number 28 Year 2014 on Copyright is related to the interests of the state to protect the creation of Folklore will mainly be exploited by other countries. Although the purpose of Article 38 as mentioned above is intended specifically to provide protection of indigenous cultures, but in its implementation will be very difficult for traditional societies to use it to protect the works of traditional expressions, with some consideration that the position of Section 38 of Copyright Act difficult to qualify "Authenticity" as required by Section 1 (3). Because it would be very difficult, relative and subjective to determine "authenticity" of a traditional work (Folklore). The fundamental questions are, firstly, what are the criteria of "authenticity" of traditional culture expressions (folklore), which is intended by this law? Clearly, this law does not provide further explanation about that. Lastly, which Institution has authority to determine "authenticity" of a traditional work? not described in this law as well.

2. Paten Act, No. 14 of 2001

Object of the Invention Patent in the field of technology. This invention must be new (novelty), has an inventive step, and can be applied in the field of industry (industrially applicable). The main requirement of patents is novelty. Seen the terms of novelty as a prerequisite to obtaining a patent, it will be difficult possibilities for traditional knowledge, especially traditional technology to be given patent protection. That's because most of the traditional knowledge used for generations and decades, given its

traditional so that traditional knowledge is not new, which means failing to meet the requirement of novelty.

3. Trademark Act, No. 15 of 2001

In Section 1 number 1 of Act No. 15 of 2001, the brand is defined as "a sign in the form of images, names, words, letters, numbers, color composition, or combination of these elements, having distinguishing features and used in the activities of trade in goods and services." From Section 1 number 1 is, in essence a brand is a mark to distinguish goods/services type, which means brand serves as the identity of a commodity. In Act No. 15 of 2001 precisely Chapter VII Section 56 - Section 60 regulated Geographical Indications and Indications of Origin. In Article 56 paragraph (1) explained that: Geographical Indication is a sign that indicates the place of origin of goods, which due to its geographical environment factors, including natural factors, human factors, or a combination of both factors, giving cirri and a certain quality of goods produced.

If related to traditional knowledge with the brand, then a more dotted with traditional knowledge is alluded to Geographical Indications. Geographical indications as an identity which refers to the region of origin of goods, deliberately used as a sign because of characteristics and quality of goods is influenced by factors geographic area. Geographical indications can be pointed in the traditional knowledge of communities in the regions as the result of indigenous knowledge created to fulfill the human needs, for example, Sulawesi Weaving, Batik Pekalongan, Asmat Sculpture, Batik Solo and so on. In which, each area has huge specific and unique quality that indicating certain value of tradition consist in it.

4. Industrial Design Act of No 31 of 2000

In Section 1 point 1 stated that the industrial design is the creation on the shape, configuration, or composition of lines or colors, or lines and colors, or a combination thereof in the form of three-dimensional or two-dimensions gives aesthetic impression and can be realized in three-dimensional pattern or two dimensions and can be used to produce a

product, a commodity industry, or handicrafts. The issue is whether traditional knowledge, especially traditional designs to enter the scope of industrial design protection? Pursuant to Section 2 paragraph (1) of Act No. 31 of 2000 states that the rights of industrial designs provided for a new industrial design. A design is considered new if on the date of receipt of industrial design is not the same as any previous disclosures. Since most traditional design has been used widely even fell down, then the chances are traditional designs cannot meet the requirements of novelty, as mentioned by this law. This means that traditional design could not be included in the scope of protection of industrial designs that require new designs.

5. Plant Varieties Protection Act, Number 29 of 2000

TK has an important role in plant breeding involving a series of research activities and testing, although with limited and simple tools to produce new varieties as an alternative to the existing plant varieties. Under Plant Varieties Protection Act No. 29 of 2000 Section 7 which states that: *“Local varieties owned by community are controlled by the state, Mastery by state referred to in paragraph (1) implemented by the Government, the Government is obliged to give the naming of local varieties referred to in paragraph (1), provision naming, registration, and the use of local varieties referred to in paragraph (1), subsection (2), and paragraph (3), as well as agencies that are tasked to do so, shall be further regulated by the Government”*.

Section 7 paragraph (4) explains that *“the government will regulate further details, which according to the explanatory memorandum to the provision include the economic sharing for the local community that owns the variety”*. This benefit sharing is now becoming implemented according to the government’s report to the CBD. Law No. 29 of 2000, however, covers only plant breeding and does not regulate profit sharing related to other activities.

Plant Variety Protection, hereinafter abbreviated as PVP, is the special protection given by the state, which in this case represented by the government with the implementation carried out by the Plant Variety Protection Office, on crop varieties produced by plant breeders through plant breeding activities. Protection of Plant Variety Rights are privileges granted to state breeders and/or holders of plant variety protection rights to use their own varieties the cultivation results or give approval to the person or legal entity to use it for a certain time. Plant varieties protection given to the varieties of species or species of new plants, distinct, uniform, stable and given name. A variety is considered new if at the time of receipt of application for plant variety rights protection, propagation materials or crops from plant varieties that have never traded in Indonesia or have been traded but not more than a year, or have been trafficked abroad no more than four years to plant season and six years for annual crops.

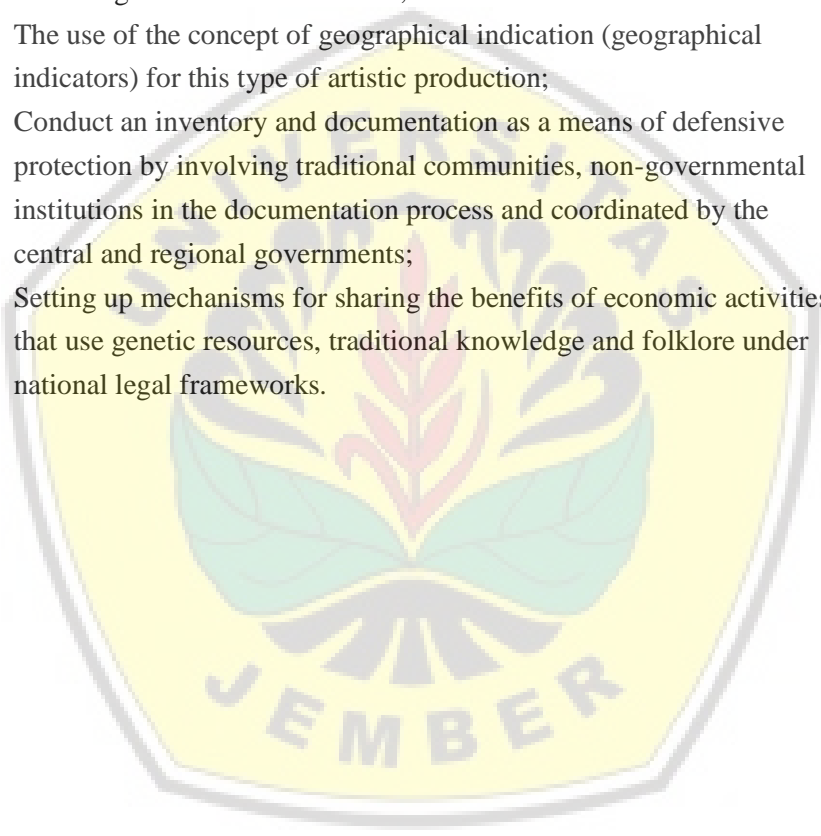
Considered unique, if these varieties can be distinguished clearly with the other varieties whose existence was already known to the public at the time of receipt of application for PVT rights. Considered uniform, if the main qualities or varieties proved crucial in uniform despite varied as a result of the way of planting and in different environments. A variety is considered stable if its properties do not change after repeated planting, or for which propagated through a special multiplication cycle, no change at each end of the cycle. If viewed at conditions as stated in Section 2, paragraph (1) for TK will be hampered element of novelty. This was due to the work of TK in the form of certain plant varieties are generally becoming more widespread and have been widely used for generations. As for the unique requirements, uniform, stable and given the name as mentioned in Section 2, paragraph (1) not a problem for a plant variety as result of TK.

6. Conclusion

In order to provide legal protection for genetic resources, traditional knowledge and folklore of the claims, commercial use without

permission, theft or actions by developed countries prior to the mechanisms of international legal instruments. Indonesia as a developing country that has the traditional knowledge and natural resources, it is important to:

- a. Establish a national legal provisions as much as possible to the needs of indigenous peoples in Indonesia as the owners of traditional knowledge and natural resources;
- b. The use of the concept of geographical indication (geographical indicators) for this type of artistic production;
- c. Conduct an inventory and documentation as a means of defensive protection by involving traditional communities, non-governmental institutions in the documentation process and coordinated by the central and regional governments;
- d. Setting up mechanisms for sharing the benefits of economic activities that use genetic resources, traditional knowledge and folklore under national legal frameworks.



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