The Protection of Traditional Knowledge and Genetic Resources in Indonesia

Submitted by: Indonesia
Summary: The Protection of Traditional Knowledge and Genetic Resources in Indonesia

1. The economic potential of traditional knowledge (TK) and genetic resources (GR) in the developing countries is predicted to be high. The developing countries endeavor to develop a new IPRs system, in which there is balance between traditional standard IPRs and the advancement in thinking based on the objective conditions of developing countries. Since the presence of an “international legally binding” instrument is yet to materialize, the most viable thing to do would be to leave the matter in each country’s hand.

2. Indonesia as a developing country is also known as a country which rich with cultural and natural resources. In this regards, Government of Indonesia (GOI) is very concern to protect those cultural and natural resources as a valuable asset for the national development.

3. There are some significant effort has been taken by Indonesia in order to protect GRTK, among others:
   a. Establishing a National Working Group on Genetic Resources, Traditional Knowledge and Expression of Folklore (WG-GRTKF).
   b. Holding national or international meetings/seminars/workshops on GRTKF in the country or designated its official to attend such activities which held outside the country.
   c. Drafting bill on The Protection and Development of Traditional Knowledge and Traditional Cultural Expressions (TCE).
   d. Inventorying of various documentation and related laws and regulations of genetic resources, traditional knowledge and expression of folklore (national, regional and international).

4. As regard to GR, currently there may not be much to be discussed since the draft bill on the protection and utilization of GR, including the access of GR and its equitable benefit sharing is still under preparation under coordination by the Ministry of Environment.

5. As for the TK, substantively the Draft bill encompasses two fundamental items, which are: the protection and the utilization. Administratively, it distinct the foreign party from the local party. The foreign needs to obtain a license in order to utilize whilst the locals only need to establish an agreement with the owner or the custodian of the TK or TCE (Art. 17).

6. TK itself is defined as an intellectual creation which relates to technology, cosmology, aesthetic values, the principles of art, social order, taxonomy, linguistic order and meaning of words,
created by creation, skill, invention and innovation based on the traditions from a particular traditional society. (Art. 1.1).

7. The Draft regulates that a protected TK consists of cultural elements that is orderly, developed, preserved and transitioned in the scope of tradition as well as having certain characteristics that is integrated with a certain society’s cultural identity that preserves such culture. It could be in the form of literature creation, artistic or scientific creation, performance, invention, design, signs, names, symbols, undisclosed information, and all other tradition-based innovations and creation that is created and intellectual activity in the industrial field, scientific as well as artistic, including agricultural knowledge, technical knowledge, ecological knowledge, medicinal knowledge, as well as healing procedures and knowledge related to biological diversity. [Art. 2]. This clearly indicates that some traditional aspect that is referred to in the concept of IPRs, which are patent, design, copyrights, trademark, and trade secret. Furthermore, it also opens the possibility of having TK as a commercialized product.
Experiences related to traditional knowledge protection or related issues in APEC Economies
Protection of Traditional Knowledge and Genetic Resources in Indonesia

Background

1. The economic potential of traditional knowledge (TK) and genetic resources (GR) in the developing countries is predicted to be high. Some popular cases has shown that many TK and GR from developing countries has been patented and commercialized by a multi national company like turmeric, brotowali, ayahuasca, and etc.

2. The developing countries endeavor to develop a new IPRs system, in which there is balance between traditional standard IPRs and the advancement in thinking based on the objective conditions of developing countries. Since the presence of an" international legally binding" instrument is yet to materialize, the most viable thing to do would be to leave the matter in each country’s hand. With support in the form of cooperation between international and regional organizations to provide technical assistance, capacity building and transfer of technology, the developing countries are expected “to establish a national mechanism for the protection and development of TKGR”.

3. Indonesia as a developing country is also known as a country which rich with cultural and natural resources. In terms of global biodiversity, Indonesia is included in top ten of the richest countries in biodiversity, known as mega diversity country. Biodiversity refers to all aspects of life support system, which includes the social, economic, and environment dimension, knowledge system, ethics and the relationship between these various aspects. The traditional communities or tribes throughout Indonesia has been preserved TK as expression of their traditional culture in the day to day activities. In this regards, Government of Indonesia (GOI) is very concern to protect those cultural and natural resources as a valuable asset for the national development.

Indonesian Efforts on the Protection of TK and GR

4. After successful hosting the WIPO International Seminar on the Strategic Use of Intellectual Property (IP) for Economic and Social Development in October 2001, GOI established a National Working Group on Genetic Resources, Traditional Knowledge and Expression of Folklore (WG-GRTKF) based on the Decree of Minister of Justice and Human Rights No. M.54.PR.09.03, year 2002. This WG has been reestablished in 2008 by the Decree of Minister for Law and Human Rights No.M.HH-01.PR.01.04.

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3 Purba, Ahmad Zen Umar, Loc. cit.
5. This WG is consist of various experts from various related institutions such as DGIPR, Ministry of Agriculture, Ministry of Environment, Ministry of Forestry, Universities, Ministry of Research and Technology, Ministry of Industrial and Trade, Drug and Food Control Board, Ministry of culture and Tourism and other related non-government organizations. The main duties of the WG-GRTKF are:

a. To prepare and set up policies which support the inventory of various documentation on GRTKF in order to prepare its databases.

b. To put efforts in the dissemination and exchange of information on the GRTKF to be used by the public.

c. To give inputs for drafting the laws and regulations and for the stand and position of Indonesia in the various fora on intellectual property rights especially related to GRTKF.

d. To support activities for searching settlement on the intellectual property rights disputes related to the usage of GRTKF and as well as the equal and fair benefit sharing of their usage.

6. A number of significant efforts have been made by the WG GRTKF in order to fulfill its duties, among others:

a. Inventory of various documentation and related laws and regulations of genetic resources, traditional knowledge and expression of folklore (national, regional and international).

b. Collecting data concerning TK and folklore in some major provinces in Indonesia.

c. Conducting some workshops/seminars on GRTKF in cooperation with related institutions.

d. Preparing of draft bill of laws on GRTKF. Currently, the draft bill on TK has successfully drafted. Since TK is closely related to Traditional Cultural Expressions (TCE) or folklore, the title of the Draft is: The Protection and Development of Traditional Knowledge and Traditional Cultural Expressions. While the draft bill on the protection and utilization of GR, including the access of GR and its equitable benefit sharing is still under preparation.4

7. In April 2005, Indonesia hosted the Asian African Summit. The summit has adopted two outcomes. One of them is The New Asian African Strategic Partnership (NAASP). As addition to the NAASP, there is also a Joint Ministerial Statement on the Plan of Action (POA). With regard to GRTKF, the POA specifically stressed the need to take concrete and practical measures to maximize the benefits arising from the protection of intellectual property rights by inter alia advancing the protection of TCE, TK, and GR as well as from flexibilities provided by trade related intellectual property rights agreements.

8. In order to realize this POA, GOI hold the Asian African Forum on Intellectual Property and TCE, TK and GR, from June 18 to June 20, 2007 in Bandung, West Java. The Conference has agreed to issue a declaration, which contains eleven points named the Bandung Declaration. The Bandung Declaration also states the importance of multilateral cooperation among the Asian African Conference members, as conveyed in the following statement: “reaffirm by the growing interest in the common concern of the Asian African countries” on TKGR issues (point 3).

9. With its main purpose of: “establishing international legally binding instruments” (point 8), the status of TKGR was affirmed as “national resources that have, but not limited to, social, cultural, economic and spiritual values that should be addressed in a fair and equitable manner” (Point 5). Technically, countries that own TKGR are stated as having the function of “the custodians of TCE and TK; and have some sovereign rights over their GR.” This last statement is important, considering the nature of TK that is characteristically communal.

10. As for the WIPO Intergovernmental Committee (“IGC”) on GRTKF, Indonesia has puts its best efforts joining the IGC meeting. Although IGC has assembled in as many as 12 sessions (the last February 2008), it has not achieved much progress in the effort to find a meeting point between the two groups of countries - meaning that the polarization in the attitudes of the developed and developing nations has remained the same. Generally, the position of Indonesia is in line with other developing countries. However, Indonesia still needs to carefully considerate all proposals related to this matter.

GR in Indonesia

11. As regard to GR, currently there may not be much to be discussed since the draft bill on the protection and utilization of GR, including the access of GR and its equitable benefit sharing is still under preparation. Because of the substance of GR is very closely related to environment, the preparation of the bill has been given to be under coordination by the Ministry of Environment.

12. The other laws and regulations which has relation to GR are among others:

   a. Law No. 5 of 1990 regarding Conservation of Biological Natural Resources and its Ecosystem.
   b. Law No. 12 of 1992 regarding the Plantation Breed System.
   c. Law No. 5 of 1994 regarding ratification of the United Nation Convention on Biological Diversity (CBD).
   d. Law No. 7 of 1994 regarding Ratification of Agreement Establishing the World Trade Organization (including TRIPS Agreement).
   e. Law No. 29 of 2000 regarding Plant Variety Protection.
   f. Law No. 18 of 2002 regarding National Research and Development System and Implementation of Science and Technology.
   g. Law No. 21 of 2004 regarding Ratification of Cartagena Protocol on Bio-safety to the Convention on Biological Diversity.

TK in Indonesia

13. As mentioned above, the title of the Draft is: The Protection and Development of Traditional Knowledge and Traditional Cultural Expressions. The contents of the Draft which is as follows:

Considerations

Chapter I General Provisions

Chapter II Protection:
- Protected TK & TCE
- Scope of Protection
- Duration of Protection

Chapter III Documentation

Chapter IV the Utilization/Exploitation:
- General
- Application to Obtain License for Utilization /Exploitation
- Rejection of Application
- Administrative Examination
- Changes & Withdrawal of Application

Chapter V Substantive Examination:
- General
- Approval and Rejection

Chapter VI Experts Team:
- Membership
- Duties and Authorities
- Exception

Chapter VII Benefit Sharing

Chapter VIII Withdrawal and Cancellation of the Utilization License:
- Cancellation upon Request
- Cancellation by a Lawsuit

Chapter IX Disputes ‘Settlement:
- Courts
- Out of Courts Settlement

Chapter X Closing Provisions

14. Substantively the Draft encompasses two fundamental items, which are: the protection and the utilization. Administratively, it distinct the foreign party from the local party. The foreign needs to obtain a license in order to utilize whilst the locals only need to establish an agreement with the owner or the custodian of the TK or TCE (Art. 17).

15. TK itself is defined as an intellectual creation which relates to technology, cosmology, aesthetic values, the principles of art, social order, taxonomy, linguistic order and meaning of words, created by creation, skill, invention and innovation based on the traditions from a particular traditional society. (Art. 1.1). In this regard, the tradition is defined as “societal

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cultural inheritance that is preserved and/or developed in a sustainable manner through cross-generations by a community or a particular traditional society.” (Art. 1.3).6

16. The owner or the custodian of TK is defined as traditional community or society which has been preserved and develop TK and TCE in traditional manner and communal (Art.1.5).

17. The Draft regulates that a protected TK consists of cultural elements that is orderly, developed, preserved and transitioned in the scope of tradition as well as having certain characteristics that is integrated with a certain society’s cultural identity that preserves such culture. It could be in the form of literature creation, artistic or scientific creation, performance, invention, design, signs, names, symbols, undisclosed information, and all other tradition-based innovations and creation that is created and intellectual activity in the industrial field, scientific as well as artistic, including agricultural knowledge, technical knowledge, ecological knowledge, medicinal knowledge, as well as healing procedures and knowledge related to biological diversity. [Art. 2]. This clearly indicates that some traditional aspect that is referred to in the concept of IPRs, which are patent, design, copyrights, trademark, and trade secret. Furthermore, it also opens the possibility of having TK as a commercialized product.7

18. The term of protection of a TK is given for as long as it is still be preserved by the owner or the custodian of the TK. (Art. 4). This condition fairly shows the efforts to protect the ownership, similar to the issue of undisclosed information or trade secret in IPRs.

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6 Ibid.
7 Ibid.
INDONESIAN EXPERIENCES

Background

- The economic potential of traditional knowledge (TK) and genetic resources (GR) in the developing countries is predicted to be high;
- The instrument of an international legally binding is not yet materialize;
EFFORTS

A. Establishing a National Working Group on Genetic Resources, Traditional Knowledge and Expression of Folklore (WG-GRTKF).

B. Holding national or international meetings/seminars/workshops on GRTKF in the country or designated its official to attend such activities which held outside the country.

C. Drafting bill on The Protection and Development of Traditional Knowledge and Traditional Cultural Expressions (TCE).

D. Inventorying of various documentation and related laws and regulations of genetic resources, traditional knowledge and expression of folklore (national, regional and international).

Genetic Resources

The draft bill on the protection and utilization of GR, including the access of GR and its equitable benefit sharing is still under preparation. The other laws and regulations which has relation to GR are among others:

- Law No. 5 of 1990 regarding Conservation of Biological Natural Resources and its Ecosystem.
- Law No. 12 of 1992 regarding the Plantation Breed System.
- Law No. 5 of 1994 regarding ratification of the United Nation Convention on Biological Diversity (CBD).
- Law No. 7 of 1994 regarding Ratification of Agreement Establishing the World Trade Organization (including TRIPS Agreement).
- Law No. 29 of 2000 regarding Plant Variety Protection.
- Law No. 18 of 2002 regarding National Research and Development System and Implementation of Science and Technology.
DRAFT BILL ON TK

- It consists of 10 Chapters and 26 Articles
- Substantively, the Draft bill encompasses two fundamental items: the protection and the utilization.
- Administratively, it distinct the foreign party from the local party. The foreign needs to obtain a license in order to utilize whilst the locals only need to establish an agreement with the owner or the custodian of the TK or TCE (Art. 17).

The Protection and Development of Traditional Knowledge and Traditional Cultural Expressions

Considerations
Chapter I General Provisions
Chapter II Protection:
Protected TK & TCE
Scope of Protection
Duration of Protection
Chapter III Documentation
Chapter IV the Utilization/Exploitation:
  General
  Application to Obtain License for Utilization/Exploitation
  Rejection of Application
  Administrative Examination
  Changes & Withdrawal of Application
Chapter V  Substantive Examination:
General
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Chapter VI  Experts Team:
Membership
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Exception

Chapter VII  Benefit Sharing

Chapter VIII  Withdrawal and Cancellation of the Utilization License:
Cancellation upon Request
Cancellation by a Lawsuit

Chapter IX Disputes 'Settlement:
Courts
Out of Courts Settlement

Chapter X Closing Provisions

Definition

- TK is defined as an intellectual creation which relates to technology, cosmology, aesthetic values, the principles of art, social order, taxonomy, linguistic order and meaning of words, created by creation, skill, invention and innovation based on the traditions from a particular traditional society. (Art. 1.1).
(Definition-Continued)

- TK shall consists of cultural elements that is orderly, developed, preserved and transitioned in the scope of tradition as well as having certain characteristics that is integrated with a certain society’s cultural identity that preserves such culture.

FORMS

- TK could be in the form of literature creation, artistic or scientific creation, performance, invention, design, signs, names, symbols, undisclosed information, and all other tradition-based innovations and creation that is created and intellectual activity in the industrial field, scientific as well as artistic, including agricultural knowledge, technical knowledge, ecological knowledge, medicinal knowledge, as well as healing procedures and knowledge related to biological diversity. [Art. 2].
This is clearly indicates that some traditional aspect that referred to in the concept of IPRs, which are patent, design, copyrights, trademark, and trade secret. Furthermore, it also opens the possibility of having TK as a commercialized product.