

Government's Policy in Implementing Sharing of Benefits from Utilization of Genetic Resources of the Traditional Knowledge of the Indigenous People

Retno Kusniati, Hafrida, Siti Marlina,

Abstract

Through legal method, this research aims to: 1) analyze procedure for the recognition of indigenous people to the legal status as a provider of traditional knowledge; 2) analyze the access for using the traditional knowledge; and 3) formulate Government's policy that needs to be implemented in realizing fair and equitable benefit sharing for indigenous peoples. The results show that: 1) There is no legal framework yet to implement the Nagoya Protocol on procedures for the recognition of indigenous people and their legal standing as providers of genetic resource of traditional knowledge. Meanwhile, the Local Regulation No. 07 Year 2012 on Empowerment and Development of the Institute of Malay culture does not regulate procedures for the recognition of Indigenous people; 2) the traditional knowledge to use plants as medicine has not been documented yet as traditional knowledge so that access to traditional knowledge is vulnerable to abuse; and 3) in the future the formulation of government policy need to increase the capacity of legislative and administrative institutions, and to build public awareness of the importance to access and benefit-sharing.

Keywords: Traditional knowledge, Indigenous people, Local Government's policy.

I. Introduction

1.1. Background

Indonesia as a megadiversity country has the potential of genetic resources and traditional knowledge, but economically it has not benefited from its utilization, because of unauthorized exploration in two ways: 1) theft, misuse, or freeriding of genetic resource and/or traditional knowledge through the patent system; and 2) the retrieval, collection without permission for commercial use of genetic resources and /or traditional knowledge.¹

Intellectual property is an idea generated by a person or group of people who create or innovatesome thing in form of copyrighted works. Based the Ministry of Research and Technology grouping, scope or kind of traditional knowledge consists of 8 groups:

1. medicinal plants and the treatment;
2. the art of dance and traditional music;
3. carving and sculpture;
4. the art of traditional weaving;
5. traditional Architecture;
6. food and traditional food;
7. culture of indigenous peoples;
8. plant breeding

At the beginning, the use of intellectual property of genetic resources and traditional knowledge of Indigenous Peoples can be accessed freely without pay because it is considered as a common heritage of mankind, "historically genetic resources were accessed for free based on the world view that these were the common heritage of mankind."² But when the increasing use and great economic value, genetic resources and traditional knowledge becomes more important. Some cases are as follows:³

- (1) The case of Basmati rice requested for the protection of Patent Rights by Tech Corporation, American business (Patent No. 5,663,484) while the rice is widely known (has been a common knowledge) and the pride of India. This American action has made a decline in India's rice production.
- (2) Case of Indonesian was the registration of medicine plants and native herbs of Indonesia for cosmetic purposes proposed by the Japanese cosmetics company Shiseido. Although the last registration of legiplants, kelabet, lempuyang, remujung, and brotowali was withdrawn by Siseido, but some other

¹Dede Mia Yusanti, *Perlindungan Sumber Daya Genetik Melalui Sistem HKI*, Prosiding Lokakarya Nasional *Pengelolaan dan Perlindungan Sumber Daya Genetik di Indonesia*, 2006, hal. 1.

²Reji K. Joseph, *International Regime on Access and Benefit Sharing, Where are you?*.AseanBiothecnology and Development Review, Volume 12 No. 3, December 2010, page. 78.

³SlametRiyantoet al, *RancanganTeknisSistemInformasiSumberDayaGenetikdanPengetahuanTradisional*, LIPI, tt, hal 3.

Indonesian medicinal plants have been registered in Japan with JP registration number 10316541 with subject Rapet wood (*Palamera laevigata*), kemukus (*Piper cubeca*), tempuyung (*Sonchus arvensis*), belantas (*Pluchea indica* L), mesoyi (*Massoia Becc aromatica*), pule (*Alstonia scholaris*), pulowaris (*Alycia reinwartii* BI) and Sintok (*Cinnamomumsintoc* BI).

- (3) The case of traditional knowledge related to the culture in carving which the lawsuit by American businessmen to artists from Bali for producing miniature silver Bali Borobudur because such products have been manufactured by an American company souvenir.
- (4) For example, there are 45 types of essential medicine in the US are derived by plants, 14 of them are taken from Indonesia, such as vinca plant that serves as a cure for cancer. In Japan there was recorded the grant of patents on medicine that the material is sourced from the biodiversity and traditional knowledge of indigenous peoples of Indonesia.¹

Genetic Resources (GRs) as encountered in nature are not creations of the human mind and thus it cannot be directly protected as intellectual property (IP). However, there are IP issues associated with GRs. Inventions or plant varieties based on or developed using GRs (associated with traditional knowledge or not) may be patentable or protected by plant breeders' rights. In considering IP issues associated with GRs, WIPO's work complements the frameworks for access and benefit-sharing provided by the Convention on Biological Diversity (CBD) and its Nagoya Protocol, and the International Treaty on Plant Genetic Resources for Food and Agriculture of the United Nations Food and Agriculture Organization (FAO).²

Legal protection to access and equitable benefit sharing on the utilization of genetic resources entered a new phase with the establishment of an international agreement through the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization to the Convention on Biological Diversity (Nagoya Protocol on access to genetic Resources and Benefit Sharing Fair and Balanced Arising from the Utilization to the Convention on Biological Diversity), which is ratified by Act Number 11 Year 2013.

Based on these international developments it is necessary to have a comprehensive legal protection to protect genetic resources and traditional knowledge mainly owned by Indonesia, specially belonging of the Indigenous People. Concerned with the implications of the ratification of the Nagoya Protocol, the role and position of local governments regency/municipality in the province of Jambi have important to be researched from a policy perspective because the indigenous peoples with their traditional knowledge lives and spreads in the regions. It is important to study about Local Government Policy in realizing the benefit sharing fair and equitable access to genetic resources of traditional knowledge of indigenous peoples.

1.2. Research problems

1. How does the regulation of procedure for the recognition of indigenous people for their the legal standing as a provider of traditional knowledge?.
2. How does the regulation to access the traditional knowledge of the indigenous people through the mechanism of prior informed consent/PADIA (free prior informed consent)?.
3. How does the formulation of government policy which needs to be implemented in realizing fair and equitable benefit sharing for using the traditional knowledge of the Indigenous people?.

1.3. Research methods

This research used legal research. This research explore and study principles of the law relating to regulation to protect of traditional knowledge of indigenous peoples through the conceptual approach and legislation. Furthermore, through legislation approach be explored the legal framework of various instrument of the traditional knowledge of the indigenous people, the conception of rights and the conception of a fair distribution of benefits over prior utilization of the ratification of the Nagoya Protocol to ensure that the obligations of the state in the formulation of the Nagoya Protocol as the new norm for the utilization of knowledge genetic resources of Indigenous people which be defined in the policy implementation.³ This research have been done at Merangin dan Sarolangun regency which lived Indigenous People Bathin Lapan and Pembarap to study traditional knowlegde by using of genetic resource.

¹Sampurno, Kompas, tanggal 19-09-2002, hal. 10.

²<http://www.wipo.int/tk/en/genetic/>

³Soerjono Soekanto dan Sri Mamudji, *Penelitian Normatif*, Alumni, Bandung, 1985, hal. 15

II. Local Government's Policy In Implementing The Fair And Equitable Sharing Of Benefits Arising From Utilization Of Genetic Resources Of The Traditional Knowledge Of The Indigenous People

2.1. The Recognition of The Indigenous People

Law Number 11 Year 2013 on Ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity (Nagoya Protocol on Access to Genetic Resources and Benefit Sharing the Fair and Balanced arising from the utilization to the Convention on Biological Diversity) is a new phase in the protection and regulation of the utilization of genetic resources. The Rights of Indigenous people as a custodian of traditional knowledge associated with genetic resources are recognized and protected.

Recognition and protection of the law needs to be addressed by Indonesia immediately because the potential loss of biopiracy are increasing. Nagoya Protocol mandated the State shall take legislative and administrative measures to realize the objectives of the Protocol in ensuring access and benefit-sharing as a result of the utilization of genetic resources and traditional knowledge of indigenous peoples.

Genetic resources in accordance with Article 2 of Law Number 5 of 1994 on the Ratification of the United Nations Convention On Biological Diversity (United Nations Convention On Biological Diversity) defines that includes genetic resources, organisms or parts thereof, populations or other biotic component of ecosystems benefits or other actual or potential value for humanity. Generally, the genetic resources of actual or potential value in the form of plants, animals, microbes and other resources that carry organisms function, part of organisms, biochemical extracts of tissue samples.

Genetic resources (GRs) refer to genetic material of actual or potential value. Genetic material is any material of plant, animal, microbial or other origin containing functional units of heredity. Examples include material of plant, animal, or microbial origin, such as medicinal plants, agricultural crops and animal breeds.

Meanwhile, traditional knowledge is knowledge that is generated by the Indigenous people which includes dances, carving and sculpture, weaving, traditional architecture, plant breeding, medicine and medicinal plants.

The problem is the status or legal standing of indigenous as providers/stakeholders/ owners of traditional knowledge need to be recognized and regulate first in a rule of local law by local government after they have to fulfill the requirements. Indigenous People has a strategic role in environment conservation. As per the 1945 Constitution Article 18B (2), that "the state shall recognize and respect the units of Indigenous People with all the traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Nation State of the Republic of Indonesia which is regulated by law.

The Indigenous people is "groups of people who for generations lived in a particular geographic area, because of the ties to the ancestral origin, the existence of a strong relationship with the environment, as well as the value system that determines economic institutions, political, social, and legal" (Article 1 of Clause 30 of Law Number 32 of 2009 on the Protection and preservation of the Environment). One of the main criteria where respected the Indigenous is the presence of local wisdom. " Local knowledge is a noble values that apply in order for the community life among others, to protect and manage the environment in a sustainable manner ". With wisdom, the Indigenous People proven generations for generations to protect the environment.

The research have done by Jalius and Muswita,¹ shows that indigenous peoples which have the traditional knowledge in the form of indigenous people in Sarolangun Batin people about genetic resources such as plants for treating various diseases as traditional knowledge passed down from generation to generation.

Local Wisdom And Drug Utilization Grow medicinal plants for local communities (local knowledge),² based on data and information gathered from the local community and the traditional village, samples of medicinal plant species in use in traditional medicine there is +39 types of plants that used by the public Guguk. The types of medicinal plants:

- a. PasakBumi;
- b. White Wood Plant Roots;
- c. Turmeric;

¹ Jalius dan Muswita, *Eksplorasi Pengetahuan Lokal tentang Tumbuhan Obat di Suku Batin, Jambi*, Pusat Penelitian Lingkungan Hidup Universitas Jambi.

² Puti Nur, Yusi Nursiam dan Nur Asiah, *Tumbuhan Obat Dan Kearifan Lokal Masyarakat Disekitar Desa Hutan Adat Guguk Kecamatan Renah Pembarapdiakses pada tanggal 12 Agustus 2014 pukul 19:52* Wibpada <http://litbangjambi11.files.wordpress.com/2011/11/pendahuluan.pdf>

- d. jerangau;
- e. Fruit Ksai (*PometiaPinnata*);
- f. Fruit Melun (*Ceremai*);
- g. Basil leaf ;
- h. fennel;
- i. Duri Spinach (*AmaranthusSpinosusl*);
- j. Fragrant;
- k. inggu;
- l. Samberoto (*Sambiroto*);
- m. leaves Kenuduk
- n. Cats whiskers (*Orthosiphonaristatus*)

Local knowledge in the form of knowledge of plant genetic resources of these drugs has not been documented and inventory institutionally as the object of the traditional knowledge of indigenous peoples. Head of Legal Environment Agency District Merangin Joni Setiawan explains that there has been Regional Regulation No. 07 Year 2012 on Guidance and Development Customs and Malayu Customary Institution Merangin. Merangin District Regulation No. 07 Year 2012 on Guidance and Development Customs and Malayu Customary Institution Merangin when examined yet accommodate the main substance of the Nagoya Protocol on the need for the State to include indigenous people to be involved in the utilization of genetic resources of traditional knowledge, including arrangements on access and benefit sharing.

Furthermore, the District Environment Office Merangin did not has policy measures to implement obligations of local governments to protect the traditional knowledge of indigenous communities which include identification of domains Pembarap community unit with local wisdom, the name and number of traditional knowledge to be protected for access and benefit sharing and socialization to build awareness of the importance of the Nagoya Protocol to the sustainability of genetic resources and traditional knowledge of indigenous peoples.

The regulation of Indegenous People stated by provisions of Law No. 32 of 2009 on the Protection and Preservation of the Environment confirmed the important role of Indigenous and Tribal Peoples, Article 2 determines that the protection and management of the environment is implemented based on the principles of participatory and local wisdom. So, Article 10, paragraph 2 a.l. determines that the drafting of the Environmental Protection and Preservation of attention to local wisdom and community aspirations.

Nagoya Protocol give opportunities to protec of the rights of Indigenous and Tribal Peoples as owners of traditional knowledge related to genetic resources, especially after the ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity (Nagoya Protocol on access to genetic Resources and Benefit Sharing Fair and Balanced Arising from the Utilization to the Convention on biological Diversity) by Act Number 11 of 2013.

In connection with the ratification of Indonesia is bound to implement the Nagoya Protokol substance. Some of the Nagoya Protocol implementation issues, such as: (1) an absence of basic data where Indigenous Law Society as the owner of traditional knowledge; (2) Determination of traditional institutions of representation of Indigenous Peoples.

Based on the provisions of Article 63 paragraph (2) provides that the Provincial Government and the authorities stated in charge of setting policy regarding the procedures for the recognition of Indigenous People, Traditional knowledge, and the rights of indigenous people concerned with protecting and managing the environment at the provincial level. While the District/City Government to implement the policy, which began the process of identification, verification, validation, determination and capacity building of Indegenous People for recognition.

Ministry of Environment, in 2012, has conducted an inventory of the Law of Indigenous Peoples in the District Batin Batin Lapan VIII, Sarolangun, and Customary Communities in District Renah Pembarap Pembarap, Merangin District, Jambi Province. Inventory covers various aspects of the existence of Indigenous Peoples.

Nagoya Protocol consists of 36 (thirty six) and Article 1 (a) attachment. The substance of the Nagoya Protocol:

- a. the scope of the Nagoya Protocol is a fair distribution of benefits and balance of any utilization of genetic resources and traditional knowledge associated with genetic resources;
- b. profit sharing, financial and / or non- financial , fair and balanced of any utilization of genetic resources and traditional knowledge granted by mutual agreement (Mutually Agreed Terms);
- c. access to genetic resources and traditional knowledge associated with genetic resources that are made through prior informed consent (Prior Informed Consent / PIC) of the provider of genetic resources;

- d. simplification of procedures for access to genetic resources for non-commercial research and special consideration of access to genetic resources in emergency situations of health, environmental, and food;
- e. global multilateral benefit-sharing mechanism (global multilateral benefit sharing) of the utilization of genetic resources and traditional knowledge of cross- country.

Nagoya Protocol Agreement is an agreement that is essential for the State of Indonesia in order to get a fair and balanced gains arising from the utilization of the Convention on Biological Diversity. The benefits obtained through the endorsement Nagoya Protocol Indonesia, among others:

1. Protect and preserve genetic resources and traditional knowledge associated with genetic resources;
2. Prevent theft (biopiracy) and the use of unauthorized (illegal utilization) on biodiversity;
3. Ensure the distribution of benefits (financial and non financial) fair and balanced on the utilization of genetic resources and traditional knowledge associated with genetic resources to providers of genetic resources by mutual agreement (Mutually Agreed Terms);
4. Laying the legal basis for regulating access and benefit-sharing on a fair and equitable use of genetic resources and associated traditional knowledge of genetic resources by mutual agreement.
5. Strengthening of state control over natural resources as mandated by Article 33 of the Constitution of the Republic of Indonesia Year 1945 and recognize the existence of indigenous people and their traditional rights in accordance with Article 18 of the Constitution of the Republic of Indonesia Year 1945;
6. Reaffirming the sovereignty of States for setting access to genetic resources and traditional knowledge associated with genetic resources;
7. Provide incentives and funding support in accordance with the legislation;
8. Create opportunities for access to the technology transfer activities of the conservation and sustainable use of biological diversity.

The ratification of the Nagoya Protocol to the International Covenant on Nagoya Protocol On Access To Genetic Resources And The Fair And Equitable Sharing Of Benefits Arising From Their Utilization To The Convention On Biological Diversity through Act No. 11 of 2013 is the first step to protect genetic resources and traditional knowledge indigenous peoples. Participation (accede) Indonesia under the treaty with the signing was done and some are through the ratification process in the form of endorsement form Act (Act) or the Presidential Decree (Decree). To determine which ratification is based on the law and which are based on the regulation has got arrangements in Act No. 24 of 2000 on International Treaties.¹

Ratification of this law so that there is a clear legal basis for hundreds of biological diversity and the recognition of the rights of indigenous people on traditional knowledge, including the right to profit sharing on utilization. Thus there must be alignment of the government in the form of the budget in order to protect genetic resources, because the ratification necessary follow-through implementable policy formulation in the form of legal and institutional framework for managing genetic resources data. Without documentation, registration and inventory of genetic resources, the goal becomes difficult to achieve ratification. The ratification of the Nagoya Protocol is important as an opportunity to protect Indonesia's natural resources and traditional knowledge.

Law No. 5 of 1994 on the Ratification of the United Nations Convention On Biological Diversity (United Nations Convention On Biological Diversity) Article 8J determines that: "Depending on the national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities that reflect the lifestyle, characterized by traditional, according to the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the sort of equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices "

While the provisions of Article 15 on Access to Genetic Resources that:

- (1) recognizes the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and depending on national legislation;
- (2) Each Party shall endeavor to create conditions to facilitate access to genetic resources for environmentally sound uses by other Parties and not to impose restrictions that are contrary to this Convention;
- (3) For the purposes of this Convention, the genetic resources being provided by a Party, in accordance with the provisions of Articles 16 and 19, is only provided by the Parties that the country of origin of such resources or by the Contracting Parties who have acquired the genetic resources in accordance Convention;
- (4) Access, where granted, shall be on mutually agreed terms and subject to the requirements of this chapter;
- (5) Access to genetic resources shall be based consensus Party providing such resources were informed earlier, unless otherwise determined by the Parties to the owner;
- (6) Each Party shall endeavor to develop and carry out scientific research based genetic resources provided by other Parties with the full participation of the Parties concerned;

¹Undang-undangRepublik Indonesia, No. 24 Tahun 2000, Undang-undangtentangPerjanjianInternasional, 185 Lembaran Negara Tahun 2000.

- (7) Each Party shall prepare a legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19, and if necessary, through the financial mechanism established in Article 20 and 21 with the aim of sharing the results of research and development and the benefits generated from commercial utilization and so forth genetic resources fairly with the party providing such resources. This division must be based on mutually agreed terms.

The characters 'intellectual property, indigenous communal and collective teryata not adequately addressed in the existing intellectual property law. Although indigenous peoples' rights are formally recognized and guaranteed by the 1945 Constitution, but still there is adequate legislation that provides protection of the rights of indigenous peoples in Indonesia. The rights of indigenous peoples to protect and enjoy their cultural heritage is recognized in several international instruments, the Convention on Biological Diversity ratified by Indonesia with Law No. 5 In 1994, the United Nations Declaration on the Rights of Indigenous Peoples, 2007, ILO Convention 169.

ILO Convention 169 of 1986 stated that: "The Nation, tribal , and indigenous peoples are a group of people who have a history trail with the community prior to the invasion and occupation, which is developed in their area, consider themselves different from other communities now located in their area or not part of the community. they are not a dominant part of society and are determined to preserve, develop, and pass on ancestral territory and their ethnic identity to the next generation; as the basis for the continuation of their existence as a tribe, according to the cultural patterns, social institutions and their legal system ."

Article 31:

- (1) Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources other, seeds, medicines, traditional games and art performances. They also have the right to maintain, control, protect and develop their intellectual property, cultural heritage, traditional knowledge and expressions of culture;
- (2) Together with indigenous peoples, States shall take effective measures to recognize and protect the exercise of those rights. J Article 8 of the Convention on Biological Diversity creates a legal obligation for the countries involved to respect, preserve and maintain knowledge, innovations and practices of indigenous peoples related to the conservation and sustainable use of biological diversity. The Convention also recognizes the rights of indigenous peoples to share in the economic and social benefits earned by the wider application of traditional knowledge and their practices.¹

Access to genetic resources is actually composed of two complementary concepts, namely access and benefit sharing. However, the tendency shows that the use of the access and benefit-sharing or Access and Benefit Sharing which is often raised. Access and benefit-sharing is defined as the ways in which genetic resources may be accessed and how the profit sharing between people or countries using the resources and people (users) or countries that provide (provider).

3.2. Local Government policy to implement access and benefit-sharing of utilization of genetic resource of traditional knowlegde

Nagoya Protocol mandated to each country to make efforts in order to ensure that traditional knowledge associated with genetic resources held by indigenous people and their local communities accessible Initial Informed Consent (PADIA) and involving indigenous people and their local communities concerned, and collective agreements which have been determined as specified in Article 7 of the Protocol. Thus, the mechanism for granting access to PADIA must be arranged through a participatory approach in order to effectively custodian of traditional knowledge related to the SDG can give consent in accordance with the mandate of the Nagoya Protocol.

Related to access and benefit-sharing arrangements are fair and balanced between customary law communities as holders of traditional knowledge to the user no measures implemented by the Office of Environment Merangin District in the form of socialization and policy formulation in the form of instructions or information on line that can be accessed by the public. Government Policy and Local Government should include policy formulation in the form of legal and institutional framework for managing genetic resources data. Without documentation, registration and inventory of genetic resources, the goal becomes difficult to achieve ratification. The ratification of the Nagoya Protocol is important as an opportunity to protect Indonesia's natural resources and traditional knowledge.

The Owner of collective Traditional Knowledge associated with Genetic Resources, contained in Article 29 of the Universal Declaration of Rights of Indigenous Peoples The United Nations Declaration of the Rights of

¹Biodiversity Information Package, Power Series Genetic, Jakarta, Indonesia Ministry of Environment, 2011, page. 12.

Indigenous Peoples (UNDRIP), which states that: 'Indigenous people are Entitled to the recognition of the full ownership, control and protection of Reviews their cultural and intellectual property. They have the right to special measures to control, develop and protect Reviews their sciences, technologies and cultural manifestations, Including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, Literatures, designs and visual and performing.¹

Legal standing is a condition in which a person or a party is determined eligible and therefore have the right to appeal or dispute or a case in the Constitutional Court.² Every society has a structure of Customary Law of the territorial nature (in terms of territorial elements is stronger than the elements of genealogical) or have a genealogical nature Yag structure (in terms of the elements of genealogy is more powerful than the elements of the territorial).

1945 does not determine who is the Law of Indigenous communities. However, the provisions of Article 18B paragraph (1) is interpreted that the existence of the Law of Indigenous peoples are recognized and guaranteed by the Constitution but such recognition conditional because there are four (4) elements that must be met are as follows:

1. The first requirement " Throughout still alive ";
2. The second requirement " In accordance with the development of society ";
3. The third requirement " The principle of the Unitary Republic of Indonesia ";
4. The fourth requirement " is set in law undangIdentifikasi Customary Communities as referred to in Article 4 paragraph a done by the Indigenous Peoples Law and/ or Local Government. (1) Identify themselves Customary Communities as referred to in paragraph (1) shall contain at least the data and information on: a. Customary Law Society 's history; B. Indigenous territories; C. Customary Law; D. wealth and / or custom objects; and e. institutional / traditional governance system.

Traditional knowledge state policy set out in Article 18 that: (1) Customary Law Society reserves the right to embrace and implement the system of beliefs and rituals inherited from his ancestors. (2) Customary Law Society has the right to preserve and develop the traditions, customs, and culture. (3) Law of Indigenous Peoples have the right to maintain, control, protect and develop traditional knowledge and intellectual property.

Based on the exposure at the discretion of the Local Government in realizing the purpose of the Nagoya Protocol on access to genetic resources of traditional knowledge of indigenous communities need a comprehensive policy that includes the identification and verification of customary law community, further determination of indigenous people to the legal status or legal standing in Local Regulation as well as documenting and menginventarisasi traditional knowledge in the data base. Policies to achieve the goal of the Nagoya Protocol can gradually proceed with the formulation of access and benefit-sharing mechanism between providers that indigenous people and traditional knowledge user.

III. Conclusion

3.2. Conclusion

1. The regulation to recognize of the status and rights of indigenous people in the Local Government of Merangin and Sarolangun in the form of Regents Decision and regional regulation do not accommodate the procedure of recognition of indigenous peoples. The regulation to recognize indigenous people for their legal status as providers of traditional knowledge are still in the form of the legal Draft on the Protection and Recognition of Indigenous Peoples.
2. Access regulation of traditional knowledge of indigenous communities through the mechanism of approval on free prior inform consent has not yet known and recognized as part of protection and recognition of the rights of indigenous people which has implications for the distribution of profits of its utilization.
3. Formulation of Government policy that should be implemented in realizing equitable benefit sharing and balanced for indigenous people is by identifying and verifying the Indigenous People, and determining indigenous people of their legal status or legal standing in the local regulation and documenting traditional knowledge and building the data base.

¹Bushar Muhammad, Ibid, hal.23.

²Undang-Undang Pokok Agraria, Undang-Undang Nomor 39 Tahun 1999 tentang HAM, Undang-Undang No. 41 Tahun 1999 tentang Kehutanan, Undang-Undang Nomor 24 Tahun 2003 tentang Sistem Pendidikan Nasional, Undang-Undang Nomor 26 Tahun 2007 tentang Tata Ruang yang mengakui eksistensi masyarakat Hukum Adat dengan gaya perumusan yang sama, juga tidak mendefinisikan siapa yang dimaksud dengan masyarakat Hukum Adat.

3.2. Recommendation

1. The Regulation of the traditional knowledge of indigenous communities as a consequence of the ratification of the Nagoya Protocol should facilitate the regulation and implementative policies to realize the goal of the Nagoya Protocol which includes: a. capacity building of human resources through the dissemination of policy and guidance for the implementation of the Nagoya Protocol to the wider community in general, particularly indigenous people.
2. Local Government policy priorities through Local Environment Office to propose budget policy for empowering the institutional so that it can implement the Nagoya Protocol and ensure equitable benefit sharing for indigenous peoples.

Bibliography

- Abu Bakar. tt. Masyarakat Adat Guguk Jambi, Hutan untuk Masa Depan Pengelolaan Hutan di tengah arus Perubahan Dunia.
- Ade Saptomo. 2010. Hukum dan Kearifan Lokal Revitalisasi Hukum Adat Nusantara, Gramedia, Jakarta.
- Adrian Sutedi. 2009. Hak atas Kekayaan Intelektual, Sinar Grafika, Jakarta.
- Agus Sardjono. 2010. Hak Kekayaan Intelektual & Pengetahuan Tradisional, Alumni, Bandung.
- Dede Mia Yusanti. 2006. Perlindungan Sumber Daya Genetik Melalui Sistem Hak Kekayaan Intelektual, Prosiding Lokakarya Pengelolaan dan Perlindungan Sumber Daya Genetik di Indonesia, Jakarta.
- Graham Dutfiel. 2001. TRIPs Related Aspect of Traditional Knowledge, (Case W Res. J. Int'l Vol 33. <http://www.menlh.go.id/peluncuran-uu-no-10-dan-11-tahun-2013-tentang-pengesahan-konvensi-roterdam-dan-nagoya-sambut-hari-kehati-2013/>, diakses pada tanggal 25 Mei 2013 pukul 20:54 Wib.
- Jalius dan Muswita. Eksplorasi Pengetahuan Lokal tentang Tumbuhan Obat di Suku Batin, Jambi, Hasil Penelitian, Pusat Penelitian Lingkungan Hidup Universitas Jambi
- Marie Battiste & James Y Henderson. 2000. Protecting Indigenous Knowledge and Heritage, Purich Publishing Ltd, Canada.
- Lies Sugondo, Masyarakat Hukum Adat dalam Kerangka Hukum Nasional, Makalah pada Advanced training hak-hak masyarakat adat (Indigenous peoples rights) bagi dosen pengajar HAM di Indonesia, diselenggarakan oleh Pusham UII-Noerwegian Centre for Human Rights, Yogyakarta tanggal 21-24 Agustus 2007
- Peter Mahmud Marzuki. 2006. Penelitian Hukum, Kencana Prenada Media, Jakarta.
- Puti Nur, Yusi Nursiam dan Nur Asiah, Tumbuhan Obat Dan Kearifan Lokal Masyarakat, Disekitar Desa Hutan Adat Guguk Kecamatan Renah Pembarap diakses pada tanggal 12 Agustus 2014 pukul 19:52 Wib pada <http://litbangjambi11.files.wordpress.com/2011/11/pendahuluan.pdf>
- Reji K. Joseph. 2010. International Regime on Access and Benefit Sharing, Where are you?. Asean Biothecnology and Development Review, Volume 12 Nomor 3.
- Retno Kusniati dan Ivan Fauzani. 2012. Analisis Model Pengaturan Hukum Hak Kekayaan Intelektual Pengetahuan Tradisional Masyarakat Hukum adat, Jurnal Ilmu Hukum Inovatif, Universitas Jambi PPS Universitas Jambi Program Magister Ilmu Hukum.
- Sampurno, Kompas, tanggal 19-09-2002, hal. 10.
- SBY: Perlu Disusun RUU tentang Hak Adat, diakses pada <http://www.presidentri.go.id/index.php/fokus/2006/08/09/882.html>, tanggal 12 Mei 2011 Pukul 21:46 WIB
- Scott Holwick. 1999. Developing Nations and The Agreement on Trade-Related Aspects of Intellectual Property Rights, Colorado.
- Slamet Riyanto et al, Rancangan Teknis Sistem Informasi Sumber Daya Genetik dan Pengetahuan Tradisional, LIPI, tt.
- Soerjono Soekanto dan Sri Mamudji. 1985. Penelitian Normatif, Alumni, Bandung.