

Legal Protection of Traditional Knowledge Concept Based Prior Informed Consent and Access Benefit Sharing System

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Abstract

Protection of traditional knowledge in Indonesia has not had effective and adequate legal regulations, so it gives opportunities to irresponsible parties for in a manner unilateral claims and take advantage of the economic function of knowledge; that is, there is the utilization of traditional knowledge without permitting access to utilization and profit sharing fair and balanced. There need to be sui rules generis governing the concept of Prior Informed Consent (PIC) for access permission and appropriate and benefit sharing balanced with the idea of Access and Benefits Sharing System (ABS). This is research doctrinal, with approach statute approach to find out whether there have been regulations and norms governing the protection of traditional knowledge.

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Perlindungan pengetahuan tradisional di Indonesia belum mempunyai aturan hukum yang efektif dan memadai, sehingga memberikan peluang kepada pihak yang tidak bertanggung jawab untuk secara sepihak mengklaim dan memanfaatkan fungsi ekonomi dari pengetahuan tradisional tersebut, yaitu adanya pemanfaatan pengetahuan tradisional tanpa adanya izin akses pemanfaatan serta pembagian keuntungan yang adil



dan seimbang. Perlu adanya peraturan sui generis yang mengatur tentang konsep Prior Informed Consent (PIC) untuk ijin akses dan pembagian keuntungan yang adil dan seimbang dengan konsep Access and Benefit Sharing System (ABS). Ini merupakan penelitian doktrinal, dengan pendekatan statute approach untuk mengetahui apakah telah ada regulasi dan norma yang mengatur tentang perlindungan tentang pengetahuan tradisional.

Keywords: Traditional Knowledge; Legal Protection; Prior informed Consent; Access Benefits Sharing System.

Introduction

Indonesia is wrong. One country develops, which has an island that consists of various races, ethnic groups, religions, and cultures. Such circumstances make Indonesia rich of traditional knowledge from multiple sources and tribes. Traditional knowledge is part of culture Which is related tight to the Right Riches's Intellectual communal (together) who must get legal protection.

Knowledge was traditional or Traditional knowledge is the ability owned or mastered and used by something community, public law, custom, or ethnic group nation. Specific Characteristics are hereditary, keep developing according to environmental changes, and are inherited from generation to generation (Labetubun et al., 2018). Knowledge traditionally covers Lots of matters, all of which are based on common knowledge or the customs of the local customary law community and origin from formal creation generated through activity academic field knowledge of agriculture, technical, ecological, treatment along method healing and knowledge diversity live (Perangin-angin et al., 2020).

Knowledge traditional own character Which unique and essential. Traditional knowledge not only have meaning important for continuity life customary law community itself, but also beneficial for country and public international Good For maintain the environment sustainable, development science and technology nor acquisition profit economical. Knowledge traditional Also plays an important role



in the global economy and has given a major role to the modern industry, for example in pharmaceuticals, botanical medicines, cosmetics, agriculture, and pesticide biological (Akbar et al., 2016). Knowledge traditional in eye public customary law is seen as something more spiritual or even sacred. This kind of view is obviously very different from the views of Western society, put knowledge traditional as something property (intellectual property) that can be an object right owned by and can commercialized for acquire money or material wealth.

Much role and benefit Which generated from knowledge traditional make companies in country proceed Which has Mastering science, technology, and abilities marketing Which good get all mark plus from various traditional knowledge (Sukandar & Windia, n.d.). More developed countries intensely look for, utilise, and develop knowledge traditional without permission from public owner knowledge traditional. Referring on reason moral, law and expediency, has enough basic reasons strong for something country and public international for arrange protection law to knowledge traditional (Septarina, 2016).

Several important international agreements related to the protection of traditional knowledge, including the 1992 Convention on Biological Diversity (CBD), which is a multilateral agreement that has three main objectives. CBD has been ratified by Indonesia through Law No. 5 of 1994 concerning Ratification united Nations Conventions on biological Diversity (Rohaini, 2015). A rule implemented from CBD ie. Nagoya Protocols on access to Genetic Resources and the Fair and Equitable Sharing of Benefit Arising from Their Utilization to The Convention on Biological Diversity. The Nagoya Protocol was ratified by Indonesia through Law Number 11 Year 2013 about endorsement Nagoya Protocols on Access to Genetic Resources and The Fair and Equitable Sharing of Benefits Arising From their Utilization to The Conventions on biological Diversity. The adoption of the Nagoya Protocol has been criticized by some problems in Conventions on biological Diversity (CBD) and one of them is Prior Informed Consent (PIC) before Access and Benefits Sharing (ABS) (Sukandar & Windia, n.d.)



Although has ratify Protocol Nagoya through Constitution Number 11 Year 2013 as well as regulation national other. Protection to knowledge traditional in a manner international as cultural identity and rights of customary law communities as right constitutional nation Indonesia from something party, institution, or body law foreign/user knowledge traditional Not yet Enough adequate, cause happening abuse and claim unilaterally on Indonesian traditional knowledge. Knowledge traditional public Java form drugs traditional Which patented by Japanese companies and there is 40 certificate patent Which published by Japanese Patent office (JPO) in Office Patent Japan. Company Shiseido has patented several potions traditional Which made of from various plant and herbs and spices. Ingredients That including Which claimed can slow down effect aging and healthy hair, made of from substances Which only found on C ignore Jawa. Government Indonesia nor Javanese people do not get royalties from profits Which in can company this Japanese (Labetubun et al., 2018). Next is the lawsuit from a businessman origin America Union Rois Hill Which register right create from design woven by one of the artists from Bali, namely Desak Nyoman Suarti whose woven designs were purchased by Rois Hill. Registration right creates by Rois Hill the even without to my knowledge from pressed Desak Nyoman Suarti (Labetubun et al., 2018).

This is very detrimental economically and culturally, so efforts are needed to optimize it protection law on activity utilization knowledge traditional Which put forward draft sustainable Development, as well as prevent it from happening misappropriation that is use by party other with ignore rights public local on traditional knowledge and biological resources, which belong to public Which concerned. Prevent happening biopiracy that is use knowledge traditional in a manner No legitimate Which aim for obtain commercial gain without the consent of the public customary law and other exploitation activities by parties foreign.

Protection in a manner positive can be done by entering draft Prior informed Consent (PIC) in access to knowledge traditional. PIC is permission from the party Which have traditional knowledge with road communicate and inform especially formerly about plan utilization knowledge traditional. Protection to potency knowledge traditional No stop after pic Approved by country origin.



Furthermore, if knowledge traditional has used there must be arrangements for distribution profit Which fair and balanced through draft Access and Benefits Sharing System (ABS) (Chairunnisa, 2015). Distribution profit Which fair and equally on utilization Traditional knowledge is a form of appreciation on contribution which are given public customary law around him as the implementation of the principal justice (Djarmiko, 2019; Indarti et al., 2020; Noptabi et al., 2022; Yulia & Zainol, 2013). Has the regulation on intellectual property rights in Indonesia accommodated this concept and to what extent is it capable of providing legal protection? This research problem will be studied in this study.

Method

The type of research used in this thesis is normative or doctrinal juridical. Researchers will examine the formulation problem with norm as well as rule law Which apply, expose it in a manner details Then provide legal solutions to research that done that is about draft PIC and ABS information regulation law sui generis. Approach study uses approach regulation legislation (statute approach) by examining the legal norms contained in various laws and regulations governing the legal protection of traditional knowledge through the concept PIC and ABS.

Sources of data used are legal materials in the form of materials law primary namely the Law No. 5 Year 1994 about endorsement united Nations Convention On biological Diversity (Convention Union Nations Concerning Biodiversity), Law Invite Number 11 Year 2013 about Endorsement (Nagoya Protocol on Access on Source Power genetics And Distribution Profit Which Fair And Balanced Which arise from Its utilization on Convention Diversity Biological), Constitution Right Riches intellectual, Constitution Number 23 of 2014 concerning Government Area, And regulation And agreement international other. The data were obtained using documentation techniques and analyzed qualitatively to answer all existing problems.

Discussion

Traditional Knowledge according to World Intellectual Properties Organization (WIPO), that is:



Traditional 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 fields (Ubbes, 2009).

Traditional knowledge is knowledge owned by the local community or area which its nature is down hereditary. Indigenous peoples are native and local people who inhabit various regions in Indonesia for generations. Understanding public law custom in regulation law national arranged in Act No. 1 Year 2014 Change on Constitution Number 27 Year 2007 about Management of Coastal Zone and Small Islands. Chapter 1 Paragraph (33):

The Customary Law Community is a group of people who have been living in certain geographic areas for generations in the Unitary State of the Republic of Indonesia because of ties to ancestral origins, strong ties to land, territory, natural resources, have customary governance institutions, and customary law systems. in their customary territories in accordance with statutory provisions (Puspitasari, 2014).

Traditional knowledge needs legal protection, because it is original knowledge that is considered to have high value for indigenous peoples. Knowledge traditional and expression culture traditional is riches Indonesia is priceless as an identity nation, so that culture area This can juxtaposed with culture nor results work international and is a state asset that is not second to none and can be of great value in order implementation draft development sustainable (Puspitasari, 2014). Articles 3 and 4 of the TRIPS Agreement regarding Most - Favoured nation treatment mention about Term 'protection' Which refer on matter- matter Which influence availability, acquisition, scope, maintenance, and enforcement IPR which related to traditional knowledge. Protection for traditional knowledge is carried out to respect and maintain knowledge systems traditional, division profit Which fair and worthy Which arise Because utilization knowledge traditional. increase utilization knowledge traditional, designed systems law and economy for holder knowledge traditional and community them and protect knowledge traditional in conservation context biodiversity.



The legal instrument in Indonesia that regulates and provides legal protection in terms of traditional knowledge is the law Number 5 Year 1999 About Reserve Culture, Law No. 5 of 1994 concerning Ratification United Nations Conventions on biological Diversity, Act Number 11 Year 2013 about endorsement Nagoya Protocols on Access to genetics Resources and The Fair and Equitable Sharing of Benefits Arising From their Utilization to the Conventions on Biological Diversity and PERMENDAGRI No. 52/2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples.

Legal Protection of Traditional Knowledge of Indigenous Peoples with Concepts Prior informed Consent (PIC)

Prior informed Consent (PIC) is the right of indigenous peoples for get information (Informed) before (Priors) A program or utilization knowledge traditional from region they. Based on the information, public custom can express consent or refuse or in other words a right of indigenous peoples to decide plan or type activity utilization traditional knowledge what kind which they allow for traditional knowledge. Explanation PIC can be seen on the table under:

<i>Prior</i>	<i>Informed</i>	<i>Consent</i>
It's a negotiation done before party user or user cut off _ Whatplan or which activities they will do it in matter utilise knowledge traditional mustfirst got permission.	Consists of: a. That party user or user must provide that information open, intact, and wide- breadth about which activities they will run fine cause nor as a result to public. b. Information be delivered with use method And Language Which understandable culture local. c. Information in convey by personal Which understand context culture local and enter aspect development capacity public local. d. Information must complete and objective including potency, impact social politics, culture, and environment life.	Is consent which is given by society yourself up information that given party user or user. something decision or agreement form permission the must achieved through a process open and gradually. Decision achieved through process Which respect each other without use violence, coercion, intimidation,



	<p>e. information _ Also must be delivered. related profit- profit potential or Also risk- potential risk which will be accepted by the public before the agreement given.</p> <p>f. The public given opportunity and time Which Enough For read, evaluate, and discuss information that given to her. The public together in a manner participatory have time for gathering information Which needed (<i>cross check</i> and confirmation), so that.</p> <p>g. Community _ get that picture enough about impact of plan Which filed</p>	<p>threats, and the bribe value customary law and or local collectively with everything that authority embraced by them</p>
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PIC Also refer on agreement which given by authority national which competent from country provider to party user before he did activity/access utilization. pic is mechanism law main for support country give authority to provide access to utilization and commercialization from knowledge traditional considering the interests of indigenous peoples as owner from knowledge traditional.

PIC mechanism guarantees can be found in the CBD along with the Nagoya Protocol. Article 15 Paragraph (5) CBD explicitly regulates the obligation to include PIC in access to genetic resources. Article 15 Paragraph (5) CBD stipulates that:

Access to Genetic Resources must be based on Prior Informed Consent (PADIA) or Prior Informed Consent (PIC) between countries parties_ensign Convention Which provide these resources, unless otherwise specified by n country that party.

The PIC concept can also be found in regulations in Indonesia in Article 68 of the Law No. 32 Year 2009 about Protection and Management Environment Life, Which state that:

Every person which does business and/or activities are obliged to provide that information related with protection and management environment correctly, accurately, openly, and appropriate time.



Setting this concept is firmer and more detailed loaded in Chapter 6 Protocol Nagoya Which give portion special for implementation pic. Provision in Protocol Nagoya related pic has provided protection innovation for the country provider source Power genetics, i.e., with exists obligation for user when want access source Power genetics country provider i.e., must accompanied with Prior informed Consent (PICs). The provider and the user are also obliged to sign a contract of mutual agreement. The Mutual Agreed Terms (MAT) will function as something guarantee for the country provider genetic resources if the resources genetics hers claimed unilateral by user. MATT containing condition and condition Which agreed between provider and user, or applicant access based on principle freedom contract (Pangestu, 2016). PIC and MAT will guarantee genetic resources that will not be exploited in a manner excessive, every transfer genetic resources that exist in the territory of Indonesia must in a manner lawful and transfer the based on the agreement and keep the promise. PICs and MAT This is draft law which most in accordance with model justice in ownership source Power genetics. Protocol Nagoya Also participate strengthen position public law custom in gaining the advantages of commercialization products Which sourced from source Power genetics owned by public custom (Hanum, 2013; Syarif, 2021).

Principles base in system pic accommodated in Bonn Guidelines or something guide generated from the CBD conference on year 2002 Which can refer implement the ABS system into the system national law of the state party, namely in the form Bonn Guideline on Access and Benefit Sharing (BG). Not yet There is rule maker in national law Which accommodate BG into the national legal system and matter the Still is discourse Which Still not yet realized.

Draft Constitution about Protection and Utilization Riches Intellectual Knowledge Traditional and Expression Culture traditional or Which abbreviated as RUU PTEBT basically not yet set about How mechanism draft pic Which general adopted in legislation protection knowledge traditional like in other countries. In the absence provision about pics, bill PTEBT the potential brings up conflict between government and public law custom Which reject for give permission utilization on knowledge traditional they on party third or party users who have obtained permission to use from government. pic Also intended as a homage to mechanics indigenous peoples in making



decisions and in determining their system of representation. Explanation (information and communication) about plan activity utilization must be delivered to public law custom. Therefore, to appreciate the rights and traditions of indigenous peoples, RUU PTEBT must own rule and procedure which clear and complete about pic Which give right to them in deciding whether they are willing or reject for allow party third utilise knowledge traditional they. PIC given by the legal community Customary law will provide legal certainty for parties third parties or users who will take advantage knowledge traditional and can avoid conflict between government and public owner knowledge traditional.

However, even though the PTEBT Bill does not yet regulate PIC, it does regulate Prior informed Consent, there is already a local regulation that regulates this matter. Regional Regulation of Lebak Regency No. 32 years 2001 about Protection on Right Ulayat Public Baduy. Clause, it gives management authority region customary fully to Baduy people. Article 4 of the Regional Regulation states " all land allotments to rights customary Public Baduy submitted fully to Public Baduy. Regarding sanctions, it is regulated in Article 6 Paragraph (1), that is state that: "Each public outside Baduy Which do activity bother, destroy and use land rights customary Public Baduy threatened criminal confinement most long 6 (six) month or fine most lots of IDR 5,000. 000, - (five million rupiahs)".

Likewise, with Bengkayang Regency Regional Regulation No. 14 Year 2002 about Management Integrated Coastal Area Resources based Public in Regency Stuffed. Clause pic seen in Chapter 24 Paragraph (3), Which declared " Society local entitled for know and give consent for any business or activity that will do party other before granting a license by the government area".

Legal Protection Traditional Knowledge in Concept Access and Benefits Sharing System (ABS)

ABS is a system that introduced CBD related regulation together about access to genetic resources and distribution profit Which arise from use source genetics that has been accessed by individuals, parties, or country foreign. Concept ABS basically is a way to gain access to resources genetics and how profit sharing is obtained from utilization source Power genetics from countries using genetic



resources to country provider source Power genetics, including in inside involve role from culture.

Protocol Nagoya determines access and benefit sharing utilization source Power biological Which based on principle fair and equitable. Protocol Nagoya Also set up the following profit-sharing mechanism condition even set exists Global Multilateral Benefit-Sharing Mechanism. Protocol Nagoya set institutional related with distribution profit on use source Power nature/life like National Focal Point and service media as well as information diversity biological clearing house (hall clearing access).

ABS has three pillars viz Access, Benefit sharing and Compliance, i.e., access, Benefits Sharing and Compliance) (Hartati, 2012). Access, the goal is certainty and clarity law. Certainty And clarity Laws can be just rules or not arbitrary and procedure on access to source Power genetics information, application before information agreement, clarity price and taking decision Which appropriate time, confession permission or Which equivalent as evidence of PIC, criteria and procedures involvement public custom and local, as well as clear rules and procedures MATT. Part Access is mentioned in Articles 6 and 7 of the Protocol Nagoya.

Benefit Sharing, Obligation every Party For take legislative, administrative, or other action a policy of sharing profits fairly and equally with party Which provide source Power including Which owned by society traditional good profit Which monetary and non-monetary. Distribution advantages mentioned in Article 5 of the Protocol Nagoya.

Compliance, Provision arrangement about Compliance can be divided into 3 types namely, obedience to Constitution national and regulatory requirements regarding ABS, compliance to Constitution national and condition regulation to knowledge traditional related with source Power genetics and obedience to mutual agreement. Obedience mentioned in Chapter 15, 16 And 18 Protocol Nagoya.

ABS settings aim to guarantee facilitated access to sources Power genetics that aim, and distribution profit Which fair and balanced on utilization source Power genetics Which have used it. Written agreement in CBD with countries its members related ABS can also be



used to specify that utilization knowledge traditional related its use shall establish the principle of division equitable benefits and rights of indigenous and tribal peoples as owner original from knowledge traditional. Right customary law community can be in the form of payment in a manner cash nor royalty Which sustainable. Fair profit sharing and balanced between beneficiary and provider knowledge traditional even has mentioned previously in Law no. 13 Year 2016 about Right Patent. Chapter 26 state:

- [1]. If the Invention is related to and/or originates from genetic resources and/or knowledge traditional, must be stated clearly and Correct origin source Power genetics and/or knowledge traditional the in description.
- [2]. Information about genetic resources and/or traditional knowledge as intended in paragraph (1) set by official institution Which acknowledged by government.
- [3]. Distribution results and/or access utilization source Power genetics and/or knowledge traditional as meant on paragraph (1) held in accordance with provision regulation legislation and agreement international in field source Power genetics and knowledge traditional.

The existence of Chapter 26 UU Patent in accordance with mandate of the Nagoya Protocol. Mention of origin traditional knowledge in the description to be recognized other countries and supports ABS has essentially been mentioned, however very unfortunate so far not yet there is Constitution which specifically regulates the concept of detailed and benefit sharing obviously, so that doesn't happen follow biopiracy and misappropriation.

The interesting thing is that indigenous peoples are a society that grows together with the concept of belief that they profess and the values of existing local wisdom. Indigenous or local people understand something not only happiness be measured of value material but there is another happiness that is helping fellow and believes that with help they will be rewarded in the future. Darrell Addison Pose states that, public custom and traditional on generally looked knowledge traditional originate from base spiritual. All creation is holy, and which sacred and secular no can separate. Spirituality is the highest form of consciousness, and awareness spiritual is forming awareness highest (Perangin-angin et al., 2020).



Knowledge traditional not something object which can made object ownership but something expression culture something public which contain mark sacred or spiritual. Protection knowledge traditional understood No on aspect economical from knowledge just, but more on aspect confession and preservation knowledge the as Wrong One from inheritance culture nation. The development of the field of knowledge requires something country for utilise, researching and developing various riches intellectual including riches intellectual owned by public custom, in matter this is knowledge traditional. Public law custom on basically wants shared development knowledge traditional they, but on the side other public law custom want so that party foreign which take advantage of the results their culture provides due recognition and appreciation stated that the invention originated from public local which concerned. Draft gift access and distribution profit or ABS appears as the way to to to bridge the injustice between interest individual, group nor something countries and local communities to knowledge traditional.

Protection And utilization to knowledge traditional intended for enhancement well-being public Customary law is not only for humanitarian purposes as the views of indigenous peoples however directed to increase the economic welfare of every member of society, through the access granted to parties foreign (Qodriyatun, 2017). Permission access to utilization knowledge traditional after through concept of PIC, followed by exists distribution profit which fair and accepted by public as owner from traditional knowledge, namely through the concept of ABS. According to one payload from contract agreement together or MAT is access and benefit-sharing mechanisms. Agreement in MAT refers to the results negotiations between the parties regarding the rights, obligations of the parties' party and system method access activity utilization. Profit sharing may vary depending on the type of benefit, condition Specific in something country and the stakeholders involved. Benefit sharing should include full cooperation in scientific, study and development technology, as well as Which originate from commercial product (Djaya, 2015).

Draft PIC and ABS in the Draft Law on Protection and Utilization Riches Intellectual Knowledge Traditional and Expression Culture traditional



Draft Constitution in a manner *sui generis* regarding protection against the use of wealth intellectual public custom that is knowledge traditional has through process drafting by Indonesian government since 2008. Draft Constitution about Protection and Utilization Riches Intellectual Knowledge Traditional and Expression Culture traditional or Which abbreviated as the PTEBT Bill has basically entered in the DPR RI National Legislation Program Period Year 2014-2019. bill PTEBT give definition from knowledge traditional as work intellectual in field knowledge and technology containing elements of traditional heritage characteristics generated, developed, and maintained by community public local or public custom.

Bill PTEBT arranged together with participation Indonesian in forums international Which held for obtain confession and protection international on PTEBT. Year 2007 in Bandung, government Indonesia organizes the Asia Africa Forum on the Protection of genetics Resources, traditional Knowledge, and Folklore. Forum Asia Africa This based on Declaration on the New Asian African Strategic Partnership (NAASP) which has agreed previously in Bandung on 24 April 2005. Year 2009 in Bali, government organize Meetings of the Like-Minded Countries (LMCs) on International Legal instruments for the Protection of Genetic Resources, Traditional Knowledge and Folklore For reach agreement shared among developing countries on the negotiations with countries proceed at the WIPO-Intergovernmental Committee meeting (IGC) on Intellectual Properties and genetics Resources, traditional Knowledge, and Folklore. Government Also active in all session meeting WIPO-IGC.

Protection Bill and Utilization Riches Intellectual Knowledge Traditional and Expression Culture Traditional (RUU PTEBT) exists as a *sui generis* law and the legal protection arrange procedures for utilization permits knowledge traditional in Indonesia, however bill PTEBT still requires more detailed and specific arrangements regarding the concepts of PIC and ABS in inside. If the two concepts have been set as should with very notice right- customary law community rights hence legal protection to utilization knowledge traditional in bill PTEBT will own certainty law and capable protect every right of customary law community as owner from knowledge traditional in a manner lawful and whole also as prevention from action misappropriation and biopiracy. Moreover Again, bill PTEBT



own urgency tall for quick be equipped and invited by government in Indonesia.

Rule pic actually has mentioned in Draft PTEBT on chapters about system method application permission utilization. Although pic has mentioned separately implicit in the PTEBT Bill However does not explicitly explain the rules and procedures from draft pic which actually. System method application permission utilization Which mentioned in Chapter 7 bill PTEBT. Article 7 of the PTEBT Bill has stated the procedures permission to utilize traditional knowledge, however there is parts that need to be completed and must be balanced with settings other related permission utilization knowledge traditional Which has contained in draft pic (precondition, implementation, and post implementation) Which include:

1. Description real form review related circumstances and existence public law custom as well as knowledge traditional Which life and developed by them, stakeholders/ stakeholders clear (team pics, facilitator, team verifier) who must be involved, as well as representatives/assistants in all process including for public law custom.
2. System method socialization, information, and communication second split party (users and providers) form Explanation of procedures and utilization activities transparent and accepted by society;
3. Form agreement approval/agreement written completed and can refer to the provisions MATT or like What form agreement besides written;
4. System negotiation until on stage taking decision in the form of a given utilization permit And Approved by each party;
5. Assurance that the agreements are in place built No violated by parties Which agreed in the form of monitoring and evaluation;
6. System method, enforcement law and penalty criminal between both parties after the utilization permit activity done.

In utilization is expected to the Minister as the representative of the government. That matter No in accordance with essence from agreement on basic initial information that gives full rights to indigenous peoples as owners of knowledge traditional for agreed and allow is knowledge the traditional can or no can utilized. The PIC



concept positions the state as supervisor during and until after process pic going on, Which Then country pointing representatives through the Central Government to the Government Regions as companions for customary law communities can communicate and receive information and guarantee Which clear until on decision on permission utilization of their communal intellectual property to foreign parties, institutions, or legal entities (users). Permission access utilization knowledge traditional in bill PTEBT even Still Not yet maximum in give rights and confess existence public law custom.

Bill PTEBT in fact Still Not yet regulates the rules and procedures of the PIC concept, which is clear and mandatory to implement, therefore through formation institutional (National Focal point) supported with authority national Which competent, Work involving customary law communities and stakeholders interest related will be useful for maximizing completeness regarding rules and procedures PIC. The PIC concept can be contained and regulated by the National Focal point, National Focal Point Alone can mentioned in the chapters on the application procedure permission utilization in in bill PTEBT.

While Concept distribution benefit Which fair and balance (ABS) in the PTEBT Bill is still not have rule law Which clear about implementation as well as procedure distribution benefit in field. The ABS arrangement in the PTEBT Bill can be seen in Chapter 7 Paragraph (11) And (12), Chapter 17 And Chapter 18, Article 22, and Article 23. Chapter 7 Paragraph (11) And (12) explained willingness distribution benefit on utilization knowledge traditional through letter statement, However No explain How form, content, and criteria letter statement to use. Permit application fee utilization arranged with Regulation Government even it does not mention what kind of Government Regulation Which accommodate it. Chapter 17 mention exceptions to Indonesian citizens who wish utilise knowledge traditional (only requires a utilization agreement), again Article 17 the in a manner indirect negate the elements important in PIC because there is no community rights customary law in the form of permissible permits from activities utilization after exists gift information, communication, and negotiation. Chapter 18 mention distribution results utilization Which No describe commercialization like what and in what field. Other provisions that regulated after the ABS is carried out is that there must be socialization and monitoring



whether benefit sharing occurs has been fulfilled and there is no violation and fraud by the user or used by third parties without to my knowledge public owner knowledge traditional. Article 22 and 23 RUU PTEBT even though it has explained the settlement dispute through court and in outside court, However Not yet be equipped with exists provision criminal.

The PTEBT Bill comes as a *sui generis* law and way out Which arrange procedures for utilization permits knowledge traditional in Indonesia, however bill PTEBT still requires revision regarding the concept of PIC and ABS in inside. If the two concepts have been set as should with very notice right- customary law community rights hence legal protection to utilization knowledge traditional in bill PTEBT will own certainty law and capable protect every right of customary law community as owner from knowledge traditional in a manner lawful and whole Also as prevention from action misappropriation and biopiracy.

Conclusion

Draft PIC and ABS are drafts that can be used as protection laws for knowledge traditionally in Indonesia. The second draft is a solution and innovation that delivers the right to public law custom in deciding whether they agree or refuse to allow party foreign (users) to make use of their traditional knowledge, as well as give position and partiality public law custom in get gains from the commercialization of knowledge, innovation, and technology which sourced from inside the traditional.

Bill PTEBT becomes a special legal regulation outside the regime IPR Which can give protection law for knowledge traditional in Indonesian from action misappropriation and biopiracy. Bill PTEBT, in fact, Still needs to regulate the rules and procedures of the PIC concept clearly and mandatory. Draft distribution benefit fair and balance (ABS) in the PTEBT Bill still does not have a rule law That is clear about implementation and procedure distribution benefit in the field. Hence, the Bill PTEBT's urgency calls for quick refinement and invitation to provide legal protection for traditional knowledge owned by the community. [w]



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