

Ratification of Regulation in Protecting the Indonesian Genetic Resources Under Susilo Bambang Yudhoyono Government in 2013

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ABSTRACT

This Study Describes the Policy Nagoya Indonesia ratified the protocol, this protocol governing access to genetic resources and equitable sharing of benefits arising from the balanced utilization on biodiversity convention, the Nagoya protocol is important for Indonesia because this protocol is an instrument to prevent the theft of genetic resources (biopiracy), Indonesia is an a country that has a wealth of genetic resources are very large. Because of the wealth of genetic resources, Indonesian dubbed "mega diversity". Indonesia has ratified the Nagoya protocol by issuing Law No. 11 in 2013 on the ratification of the Nagoya protocol access to genetic resources and benefit sharing fair ang balanced arising from utilization.

Keyword : Foreign Policy, Nagoya Protocol, Biopiracy, Megadiversity, Genetic Resources

INTRODUCTION

This research will analyze the Indonesian interest in signing the Protocol of Nagoya and ratifying it in 2013. In 2011, the Government of Indonesia had signed the Protocol of Nagoya, an international treaty within the framework of the Convention on biological diversity (the Convention on Biodiversity). This agreement regulates a comprehensive protection on the wealth of biodiversity and guarantees a profit sharing for the owners of genetic resources, such as Indonesia.

A number of academic studies clearly show that the value of biological resources and related traditional knowledge can reach 500-800 billion US dollars each year. Therefore, the efforts of genetic resources protection is urgency to be applied in order to prevent a greater harm, especially for a country that has a wealth of great biological resources (*mega diverse country*), such as Indonesia.

The Nagoya Protocol was agreed at the meeting of the 10th State Conference on the Convention on Biological Diversity on 29 October 2010 in Nagoya, Japan. The adoption of this Protocol was a historical moment after the negotiations that took almost 10 years. On this occasion, Indonesia signed a Protocol of Nagoya along with Guatemala, India, Japan, Norway, South Africa, Switzerland, and Tunisia. Thus until today there are 21 signatory countries from the 193 States on the Convention on Biological Diversity.¹

¹ *Ibid*



Indonesia is a country which has a wealth of very large genetic resources. Because of its richness in genetic resources, Indonesia is titled ' mega diversity '. The wealth of genetic resources requires good management and protection. It is needed because the rich countries in genetic resources will be vulnerable for biological piracy (biopiracy) by developed countries which are rich in technology of biospekasi.

The Government of Indonesia is drafting for legislation on genetic resources management. The taken policies by government regarding to the just and equitable sharing of benefits over genetic resources generally involve two things, which are; institutional capacity building and capacity building of indigenous people. Institutional capacity building includes the establishment of national focal points and competent national authority which is responsible for genetic resources and traditional knowledge related to genetic resources.

THE DISCUSSIONS

Foreign policy is essentially an overall attitude and activity of a country to cope with the problem as well as to reap the benefits of its international environment. Thus, the actual foreign policy is the result of the internal and external environment interaction. Nevertheless, the foreign policy of a country must be addressed to achieve its national interests. Therefore, there are two fundamental elements of foreign policy, they are the national objectives and the means to achieve them.

As a developing country which is rich in potential cultural variety as well as biodiversity (mega diversity country), Indonesia views the importance of its participation in the negotiation process within the various international forums concerning natural resource protection issues. Through the participation of Indonesia as a part of developing countries in overcoming the protection of natural resources issue will offer a prospect for the manifestation of Indonesia's national interests in the international political scene. These opportunities should be used by Indonesia to fight for its national interests, so it will not to feel aggrieved in the future and in accordance with what is essential for Indonesians. To Indonesia, natural resources are not just the economic and technical problems, but rather as a reflection on the demand of cultural matters and foreign relations which are dynamic, so it's important to be managed diplomatically.

With democratization in various fields, Daniel s. Papp² posited that goal setting for national interest is often difficult to achieve a national consensus of what national interest exists, then what kind of foreign policy to achieve the national interests. Although when the national interest has been agreed, the formulation of foreign policy must be through a long process in attaining the final decision as the official State policy. The shape of produced foreign policy is often as a form of accommodation and compromise from the concerned parties, which in this case is the ratification of the Protocol of Nagoya by Indonesia.

² Daniel S. Papp, *Contemporary International Relations*, 5th ed, Allyn & Bacon, Boston. 1997. hal.136-143.

The protection of natural resources was expected to bring a great benefit to Indonesians as the Indonesian Vice President's statement, Budiono, that this would bring big economic development for the people of Indonesia since Indonesia is a giant social laboratory.³ In addition to the economic contribution and the protection of cultural products, the other benefits relate to the bargaining position of Indonesia in international interaction, especially with developed countries if the political protection of natural resources is going as it should. Besides, an active attitude⁴ of Indonesia in the political protection of natural resources will also impact on the image of Indonesia in the eyes of the world and serve to deflect American unilateral pressure through the establishment of Indonesia as the priority watch list of the Intellectual Property hijackers in the world.

2.1. Indonesia Ratifying Protocol of Nagoya

Indonesia has ratified the Protocol of Nagoya by publishing the Act number 11 in 2013 about ratification of Protocol of Nagoya on access to genetic resources and Benefit Sharing in a fair and balanced arised from its utilization. By ratifying, Indonesia could get benefit from the Nagoya Protocol, such as the assertion of State control over natural resources and strengthen the sovereignty of the State over the setting of access to genetic resources and traditional knowledge of customary law society and local communities, in accordance with article 33 and article 18 of the 1945 Constitution.

The Nagoya Protocol also set the theft prevention and unauthorized utilization of biodiversity (biopiracy), ensure the fair and balanced sharing of benefits (financial or non-financial) for the utilization of genetic resources, as well as create opportunities for access technology transfer activities on the conservation and utilization of biodiversity in a sustainable way.

2.2 Protection of Genetic Resources in Indonesia

Indonesia is a country and rich in genetic resources. Therefore, Indonesia hoped that the ratification could maintain genetic resources from theft by foreign countries intellectually. Deputi Pengendalian Kerusakan Lingkungan dan Perubahan Iklim KLH, Arief Yuwono, said, if it is seen through the lawful path, many foreign researchers who volunteered themselves to do research of biodiversity in Indonesia. About 70 percent of the 500 research proposal that go to KLH, are asking permission to examine the biodiversity.⁵The problem is that, though Indonesia is one of the

³ Budiono, tabloid diplomasi

⁴LMCM Gaungkan Kemitraan Internasional Wujudkan Rejim Hukum, tersedia pada <http://www.kemlu.go.id/Pages/News.aspx?l=id>, diakses pada Jumat, 29 Januari 2014 pada pukul 20.15 WIB.

⁵ Indonesia Tuan Rumah the 15th Meeting of the ASEAN Working Group on Coastal and Marine Environment – tersedia pada <http://www.menlh.go.id/indonesia-tuan-rumah-the-15th-meeting-of-the-asean-working-group-on-coastal-and-marine-environment/#sthash.mudYIPYP.dpuf> di akses pada 23 Mei 2014.

nation's mega biodiversity in the world, we currently do not have enough budget or technology to cultivate and dig the whole our potential of genetic resources. Meanwhile, foreigners, with budgets and qualified technology, can cultivate medicinal plant materials into medicines. If it is patented, the research results can bring the advantage of billions of dollars.

Currently, the Government pays attention to natural resources and traditional knowledge was taken by foreign parties. Moreover, during this time, there is no profit sharing from foreigners who patented the resources originating from Indonesia.

The process of intellectual theft by foreign parties allegedly has lasted long. During this time many researchers from abroad came to Indonesia as a tourist. However, while in Indonesia they were researching. The result of their patented and its value could reach billions of dollars. Therefore, as an effort of identification and verification of biodiversity, Indonesia must get support from universities and research institutions. The Government also had to show partiality in the budget.

The ratification of the Protocol will change the way of thinking. The ratification gives opportunity of recognition on the rights of the community, not just the intellectual property for this time focusing on the individual. The rights of traditional knowledge, for example, in the perspective of intellectual property rights are currently difficult to be admitted because of its purported spiritual, not economically and reproductively in the sense of there are no new innovation and it is taught more on orally.

Genetic resources and traditional knowledge in Indonesia requires for protection. Such protection could be supported by ratifying the Protocol of Nagoya signed previously by the Minister of the environment. Ratification would also need to be followed up with an inventory of genetic resources and traditional knowledge. A lot of people, including academics, still have less consciousness.

When genetic resources are utilized properly together with the Intellectual Property system and for the benefit of its own people, this is a synergy that supports each other in benefit from the potential of genetic resources. By looking at current conditions, which generally occur in developing countries including Indonesia, IPR (intellectual property rights) system turned out hasn't been able to push national economic potential of utilization of genetic resources and thus increase the occurrence of a misappropriation or biopiracy⁶.

The patent is one of the types of IPR and most closely related to the utilization of genetic resources. The provisions of the patent system associated with the utilization of Traditional Knowledge and genetic resources related are⁷:

1. a patent is granted for any invention, whether products or processes, in all fields of technology throughout the new invention, having an inventive step and be industrially

⁶ Zainul Daulah, *Pengetahuan Tradisional : Konsep, Dasar Hukum dan Praktiknya*, Rajawali Pers, Jakarta, 2011

⁷ Purba , Afrillyanna, *TRIPs –WTO & Hukum HKI Indonesia, Kajian perlindungan hak cipta seni batik tradisional Indonesia*, PT. Rineka Cipta, Jakarta, 2005.

applicable in TRIPs (Treaty of Rights of Intellectual Properties) Article 27 (1) and the patent law No. 14, 2001.

2. that the Microorganism that has existed in nature or the result of genetic engineering is a patentable subject matter in TRIPs Article 27 (3). The second Article above becomes important in relation to the utilization of genetic resources because⁸:

- a. the Treaty of TRIPs allow genetic material to be patented (and their derivative products) and also certain plant varieties (with a system of sui generis). Treaty of TRIPs does not regulate how patents or plant variety is obtained, whether or not consistent with the right of the State (sovereignty) of origin of the genetic resources and there are an inefficient provision among developing countries as the owner of genetic resources and developed countries with the capabilities of the technology.
- b. Treaty of TRIPs does not have patent restrictions resulting from traditional knowledge which means contrary to article 8 (j) of the CBD.
- c. the Treaty of TRIPs provides protection of genetic material (and its derivative products) through patents, without ensuring that the rule of the CBD, which include prior informed consent and benefit sharing be considered.

By the number of misappropriation and inappropriate utilization of genetic resources, thriving international issues, namely:

The patent system is not in line with CBD because:

1. There is no restriction for the patents of traditional knowledge
2. The patent system does not guarantee the Prior Informed Consent (PIC) and Benefit-Sharing
3. The absence of a reverence for the Authority (sovereignty) of a country where genetic resources originated.

In addition, microorganisms are rated not as an invention, so it should be a subject matter that cannot be patented.

2.3 The Fair and Balance Benefit Sharing on Utilization of Genetic Resources

Member countries of the International Treaty of plant genetic resources for food and agriculture had agreed to set aside a commercial advantage of 0.6 percent from the benefit of commodity sales of genetic resources. All this time, this monopoly ownership of plant genetic resources for food and agriculture could trigger international disputes. It was expected by the existence of these rules, any member country can meet the needs of genetic resources without causing a dispute.

The deal was important for opportunities equalization of each Member State to get assistance especially in the technology transfer. During the time, the problem of developing countries is in their ability to access the technology. Later on, each member state that sells commodities from the Genetic Resources commodity from other countries must set aside the 0.6 percent net profit to be deposited to The

⁸ *Ibid*

International Treaty of Plant Genetic Resources for Food and Agriculture Manager in Rome, Italy via the scheme Benefit-Sharing Fund (BSF)⁹.

Karden Mulya, head of the Centre for Biotechnology Research and Agricultural Genetic Resources, added that a profit sharing would be determined by the Regulator. "Because it is a representative of 121 legitimate Member States," he said. Indonesia had previously filed a profit of 0.7 percent, but after having discussed with other Member countries, it was agreed upon by just 0.6 percent.

The International Treaty of plant genetic resources for food and agriculture was an effort of countries under the Food and Agriculture Organizations (FAO) to regulate the prevention of monopoly ownership of genetic resources, because basically every country has a dependency to another country to meet the demand for genetic resources.

Indonesia as the second largest country with a wealth of genetic resources after Brazil has commitment and attachment to the conservation and utilization of genetic resources. In line with the commitment, Indonesia has ratified the agreement in the form of the Act of Indonesia Republic No. 4 in 2006 on the ratification of the Treaty of plant genetic resources for food and agriculture.

Indonesia has been implementing the exchange arrangements of plant genetic resources for food and agriculture through Agricultural Ministerial Regulation No. 67 in 2006 and the Agricultural Minister Regulation No. 15 in 2009.

2.4 Biodiversity Conservation

Conservation of biodiversity is necessary because the utilization of biological resources for various purposes is unbalanced and will cause some types of flora and fauna rarer due to Habitat loss, degradation of ecosystem and depletion of germ plasma. This condition should be prevented so that the wealth of biodiversity in Indonesia can still sustain the life.

Indonesia is home to important place (hotspot) for biodiversity in the world. However, this biodiversity is threatened by degradation and loss of forest massively.

CONCLUSION

Indonesia as the archipelago nation located in the region of the Equator has a high biodiversity. In the world it is known that there are some mega centres of biodiversity and Indonesia is in the second position after Brazil. In terms of the species richness of plants, animals and microbes, Indonesia has 10% of flowering plants existing in the world, 12% of the mammal, 16% of reptiles and amphibians, 17% of birds, 25% of fish and 15% of insects, although the land area of Indonesia is only 1,32% of the

⁹ Traktat Internasional Tingkatkan Teknologi Pertanian – Tersedia pada http://www.jurnas.com/news/15359/Traktat_Internasional_Tingkatkan_Teknologi_Pertanian_2010/1/Ekonomi/Ekonomi#sthash.SrKBpFrr.dpuf di akses pada 2 Juni 2014. Pukul 21.22 wib

entire land area of the world. When the entire world is estimated to have about 2 million insects, in Indonesia there are about 300 thousand types. In the animal world particularly, Indonesia also has a privileged position.

Indonesia has ratified the Protocol of Nagoya by publishing Act Number 11 in 2013 about the ratification of Protocol of Nagoya and access to genetic resources also to a fair and balanced benefit sharing arising from its utilization. By ratifying, Indonesia could get benefit from the Nagoya Protocol, such as the assertion of State control over natural resources and fortify the State sovereignty over the access setting of genetic resources and traditional knowledge of customary law society and local communities, in accordance with article 33 and article 18 of the 1945 Constitution. The Ratification was an effort to keep genetic resources from the foreign theft intellectually. The Nagoya Protocol also set the theft anticipation and illicit utilization of biodiversity (biopiracy), ensure the fair and balanced sharing of benefits (financial or non-financial) for the using of genetic resources, as well as creating opportunities for access technology transfer on the conservation activities and utilization of biodiversity in a sustainable way.

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