THE EMPOWERMENT MODEL OF INDIGENOUS PEOPLE FOR LEGAL PROTECTION AGAINST INDONESIAN TRADITIONAL KNOWLEDGE

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ABSTRACT

As the holder of nation’s heritage intellectual rights like traditional knowledge, indigenous people are really proud to promote the forefather’s creation but they can not refuse if their traditional knowledge is exploited by foreigners without any compensation. Therefore, the linked Institution (of Intellectual Property Rights/IPR) has to apply an empowerment model to protect and enforce the traditional knowledge generally and specifically (sui generic). There must be an effort to protect the traditional knowledge optimally. This research is about legal protection to traditional knowledge by applying an empowerment model of indigenous people based on literary and field study. The applied approaches are historical approach, statute approach, and sociological approach. The result of research resumed that empowerment model of indigenous people in legal protection to Indonesian traditional knowledge is recommended to be applied by using this model seriously. Indigenous people have to take a part to promote it, supported by coordination National Government, Directorate General of Intellectual Property Rights Ministry of Law and Human Rights, Ministry of Industry, Ministry of Commerce, Ministry of Cooperative and SME’s, Ministry of Tourism and Creative Economy, Local Government, Banking, Local and National board of Industry (called DEKRANAS/DA), University, IPR Consultant and Non Government Organization (NGO). In the law of traditional knowledge, people will be supposed as a subject that has an active role in legal protection and traditional knowledge preservation activities.

Key words: empowerment model, indigenous people, traditional knowledge, legal protection

1. INTRODUCTION

Traditional knowledge has been invented since last ages and has been a public domain for indigenous people, so the inventor or creator is anonymous individually. People have kept and protected it from destruction as far as they can; no legal protection exactly to give a legal certainty for traditional knowledge. People are really proud to promote and introduce their forefather’s intellectual creation by open mind, but they cannot refuse if the traditional knowledge is exploited by strangers without any compensation. There fore the linked institution has to make and apply an enforcement especially towards empowerment model for indigenous people, so the have an ability to protect themselves. The other attention focus is awareness of people to protect their genetic resources and tradition, like traditional song, cultural ethnic, wisdom, custom and aspects of life variety that is available in this country (Indonesia). There are many contradictions which proposed of Indonesian’s culture and art by claiming that the available abundant natural resources and the traditional creation is forefather’s heritage that can be used by anyone and any time (common heritage of mankind).

There is an important reason and need to be an attention focus caused by limited data, documentation and information about the traditional knowledge that has existed since last ages. The indigenous people who limitedness about law, no legal protection and no enough support from government to promote make everything about traditional knowledge will be easily spread, adopted, realized and claimed by strangers or foreigners as theirs, for example, east Javanese Reog (Reog Ponorogo) has been claimed by foreigners as theirs, so has the local song. Taking care of government is needed, law enforcement has to be applied, followed by the people empowerment itself.

The traditional knowledge has been common right for traditional people and also has been maintained and kept although the law of intellectual property rights has not yet protected it accurately. Indeed, the effort is not enough and unbalanced to law enforcement (Sardjono, 2005). Some Indonesian’s traditional knowledge has been improved to fulfill patentable invention requirement and patented by foreigners as theirs and ‘owned’ it, likewise the product of traditional arts this has opened Indonesian people’s view and realized Indonesian people in order to keep and protect them. The problem is what can the law of IPR protect it generally, specifically and sui generic (exclusively separated)? Then, what can we do to protect the traditional knowledge optimally?
2. RESEARCH METHODOLOGY

This research is about the legal protection to traditional knowledge by empowerment of Indigenous people with using literary (secondary data) and field study (primary data). Literary study is a process of secondary data collection like primary, secondary and tertiary law substance. Primary data is an empirical data which is collected by observation, questioner and in-depth interview with indigenous elders (called Tetu Adat), headman (called Kepala Kampung), local government and the linked institution. The applied approaches are historical approach, statute approach and sociological approach. This research is based on the prior research (roadmap of research) in east Java (Waru Sidoarjo 2007; Madura 2006) and Lampung (2009), Trusmi Cirebon (2010), and Bantul Yogyakarta (2011). Then, especially for this research, we take samples from out of the area namely Bali, West Nusa Tenggara (NTB), Kalimantan, North Sumatera (Medan) and Papua. The reason is that all the islands have many expressions of cultural heritages (folklore) and traditional knowledge products which may not touched yet by strangers and have to be protected as soon as possible.

3. RESULT AND DISCUSSION

Empowerment by participatory (Soenyono, 2007) supported this result. Otherwise, traditional knowledge needs sui generic protection (Maulana 2006, Siagian 2006). Based on the result of questioner analyzes and interview empowerment of indigenous people for giving legal protection to Indonesian traditional knowledge, it is possible to be performed by applying the model like as the following picture (attached). People with their traditional knowledge will be supposed as subject who plays an important role in giving legal protection and preservation of traditional knowledge. The people really need any supports are as follow: 1) socialization and legal protection, 2) empowerment and promotion program, 3) capital aid, facilities and incentives, 4) technical, marketing and management training beside law enlightenment, and 5) support, paying attention and coordination with any linked institutions namely National Government, Directorate General of IPR, local Government, Industrial and Commercial institutions, Banking, Board of National and Local Crafts (called DEKRANAS/DA), Collage / University, Cooperative, IPR Consultant and others, also NGO.
Fig. 1. Top-down and bottom-up model for promoting and protecting Indonesian traditional knowledge.
Role of National Government
National Government has an important role as a decision maker in this country and also as a key figure in applying top-down and bottom-up Model. Therefore, National Government has tasks to:

1. Preparing, performing and evaluating the empowerment program.
2. Preparing law instruments (by regulation) and policy.
3. Socializing “promote and protect” continuously.
4. Preparing an international publication.
5. Giving rewards and incentives.
6. Preparing and performing a multicultural education by slogan “Bhinneka Tunggal Ika” to support national defense which is organized by the Ministry of Education and Culture of Indonesia.

Role of Directorate General of IPR
Ministry of Law and Human Rights, as specially Directorate General of Intellectual Property Rights as a government institution have responsibility to protect the right of the nation’s heritage Intellectual namely traditional knowledge (and folklore). Tasks of Directorate General of IPR are as follow:

1. Performing activity of data collection and cross checking data about traditional knowledge at the local government, tourism and Industrial and commercial institution.
2. Preparing Instruments for international and national publication by proposing disclosure of origin.
3. Socialize of cultural tradition, promote and protect of traditional knowledge by involving indigenous people.
4. Facilitating the law proposal of traditional knowledge is suitable with indigenous people’s aspiration.
5. As a facilitator between indigenous people, government and others.

Role of Local Government
Local Government ought to comprehend about indigenous people and traditional knowledge besides it ought to have an initiative and proactive to improve the traditional knowledge. The tasks of local government are as follow:

1. Performing an activity of data collection about history traditional knowledge until to grass root level to get information’s accurately.
2. Giving facilities and ease to the promotion and marketing activities.
3. Giving training in technical field and local icon.
4. Coordinate with Industry and Commerce institution, Board of National/ Local Craftsman (called DEKRANAS/DA), NGO and Cooperative.

Role of Board of National / Local Crafts (DEKRANAS/DA)
Board of National / local Crafts is formed by an official letter between 2 ministers namely the Minister of Industry and the Minister of Education and Culture number: 85/M/SK/3/1980 and number: 072B/P/1980 the date of March 3rd, 1980 to support the continuity of activities at the local area based on the letter of the Minister on Intern state (called MENDAGRI) date of December 15th, 1981, it is found an organization and know as Board of National/Local Crafts (DEKRANAS/DA). DEKRANAS has been so long enough active in people’s crafts activity and passed 5 times management period. So the management of DEKRANAS working period 2004–2009 then 2010–2015 is parallel with national Conference of DEKRANAS, based on Common Decree of 6 ministers, namely Minister of Industry, Minister of Education and Culture, Minister of Cooperative / Middle and Small Scale Entrepreneur (called UKM), and Minister of State Company (called BUMN) and has changed since 27th of April, 2005.

Board of National / Local Crafts has to play a role actively to support promotion and protection activities against traditional knowledge, promotion and protection activities to indigenous people all at once. Tasks of DEKRANAS/DA are as follow:

1. Giving Training and Practicing for craftsman (indigenous people)
2. Doing promotion, marketing and protection activities.
3. Coordinating with the linked institutions and craftsman
4. As a facilitator for indigenous people, and so does the local government.
Role of Tourism institution (Ministry of Tourism and Creative Economy)

Tourism institution and the local Government usually want to accentuate of local icon in order to be known by people nationally and internationally. So to support the protection and promotion of traditional knowledge, Tourism institution has tasks to:
1. Performing promotion program continuously.
2. Having initiative to make / create an icon and publication.
3. Performing data collection about the local traditional knowledge
4. Doing coordination with the local Government also Industrial and commercial institution.

Role of Industrial and Commercial institutions

The indigenous people expected that both of these institutions can play a big role continuously with monitoring the using capital given by government. Tasks of Industrial and Commercial Department:
1. Performing data collection about Craftsman and kind of people’s Crafts.
2. Creating a local industry icon which can be sold extensively (nationally and internationally) by improving the traditional knowledge that has been kept and preserved hereditary.
3. Giving training about technical, marketing and management skill.

Role of Banking

People expected any capital aids such as based small-business loan or Kredit Usaha Rakyat (KUR) which accelerated the development of real sector, KUR or other kind of loan quickly and easily. So, Banking has a role to give capital loan by low interest rate or performing a profit sharing business with craftsman in the area.

Role of Craftsman’s Organization / NGO/ Consultant

The tasks area:
1. To support people’s enforcement by paying attention and participation
2. To expand cooperation’s networking and market share
3. To apply moral values for common interest.
4. As the facilitator in training and struggle for getting IPR

Role of Cooperative

Cooperation is available at all Craftsmen but it has to revitalize its role to improve its member so they can more powerful economically and have legal awareness. Tasks of cooperative are as follow:
1. Revitalize role of cooperative
2. Increasing management skill of craftsman
3. Performing coordination technically.

Role of University (College)

Local Government and people really expected university can participate in the law enforcement program. So, university has tasks to:
1. Doing a research about traditional knowledge
2. Socializing about right of IPR, because people is not so comprehend about law
3. Increasing People’s awareness about IPR law
4. Helping to get the IPR
5. Persuade Indigenous People to take part in training and seminar

Role of Indigenous People

People are a main focus to promote and protect the traditional knowledge because people are not an object but is a subject to perpetuate and protect the traditional knowledge. People have an important role in success of empowerment program, protection and perpetuity of traditional knowledge. Tasks of people are:
1. Preserving and protecting the traditional knowledge
2. Maintaining moral values of nation’s heritage Intellectual property rights
3. Improving their self by top down and bottom up systems (with all linked elements)

Discussion

Legal protection against anonymous creation as folklore and traditional knowledge must be handled soon (Citrawinda, 2006), by defense and participate people to promote and protect (Purwaningsih, 2012). The proactive participation supported by awareness is very important (academic conceptual for regulation Traditional Knowledge,
Based on a result of questioner analyze is said that people really comprehend about the traditional knowledge (also folklore), it is proved by the majority answers as big as 74.8% people product/creation that was inherited by hereditary (Cultural, genetic Source, general knowledge and Customs) have to be maintained well. But totally, just a little part of people have comprehension about IPR, the percentage is 34%. So, people have to be given the comprehension about it (IPR) for preservation of traditional knowledge. Indigenous People are really aware about sense of belonging (called Handarbeni) and really want to protect and preserve the traditional knowledge, so people really support to give a protection for traditional knowledge by majority answer 86%. People also really need support to preserve and improve the traditional knowledge by socialization and legal protection (51.3%), participation and empowerment program in all promotion activities (24%), Capital Aids and facilities (2%) and training and illumination (17.5%).

By priority, people emphasized that how very important the socialization of legal protection is by percentage 46.5%, aspiration for people enforcement 21.5%, improving management, cultural and product 16%, giving incentive training and cooperation (12%). Based on 400 collected questioners, there are craftsman and industrialist (trash collector who employed workers) by worker more than 10 persons is 12.5%, workers 5 up to 10 persons is 15%, Workers 2 up to 5 persons is 13%, worker one person is 1.8% and non industrialist is 58.3%. There are non craftsman and non industrialist, but they are indigenous people who want to give any idea, answered in a special questioner that they are non industrialist. So they are classified in this category namely individual craftsman, not craftsman as an entrepreneur.

Based on questioner analysis, apparently it is only 18 % respondents have followed an illumination activity about IPR by local government, so people really want to know much more about traditional knowledge and the right of IPR. They really expected supports from any linked institution (local and national government, university) in addition, when asked: “what kind of training and illumination that the followed before?” specially for the answer “right of IPR is only 3.3%. Therefore, government and any linked institutions have to take a part seriously to enforce the people by giving comprehension about law and cultivating the traditional knowledge protection and promotion.

Kind of the people’s wanted protection to the forefather’s heritage is the legal protection by applying an official regulation and other regulation (52.5%), international acknowledgement (26.3%), Customs protection (9%) and hereditary protection (7%). So it is resumed that law protection like regulation for law certainty is really needed by people and so is International.

By philosophy approach, people really comprehend about traditional knowledge protection, proved by answers fro the questions to what is your basic opinion (philosophy) to the traditional knowledge. Traditional knowledge is forefather’s heritage have to be kept (46.8%), traditional knowledge is a potential asset which have to be promoted and protected (34.8%), traditional knowledge is a symbol of nation’s proudest (9.3%), traditional knowledge is the world’s common right (3.5%) and not comprehend (5.8%)

People have a sense of belonging to the traditional knowledge and will keep them, when asked about people’s opinion if one of nations heritage arts is claimed by foreigners as theirs, Indonesian people’s answer is that we have to be angry and report it to linked institution at the local government (34.3%), propose a suggestion to National Government to admonish them to pay amount of money for compensation / royalty (24.3%). So two of the largest answer (number in 58.6%) reflected that people have had a good comprehension about law and traditional knowledge that the traditional knowledge as owned indigenous people to be kept, promoted and protected.

But it’s need to be worried, that the act of preservation and law protection of traditional knowledge in the society level is not so enough. It’s proved by answers for the questions about how to promote the traditional knowledge before? The answer is only as viewers and actively giving support / donation (43%); only want to preserve it bay art of role and education while giving comprehension.

To young Generation (17.8 %), actively doing promotion and preservation by using any stages, institution and people’s service advertisement (15.8%), participate to be a member of group (for example wayang orang and dancing art) and promote it at a cultural performance program (14.5%), people professionally found a community like NGO which care about traditional knowledge (9%). So it is needed a guidance and efforts to increase the care of anyone to rise, empower, enforce and promote the traditional knowledge, people have worked hard to preserve the nation’s heritage intellectual rights, really needed attention from government and linked institution. People will not be silent to wait for donations/helps, they also participate actively supported by enlightenment about how important the protection and promotion are, beside training support, facilities and many others. In conducive situation, it is very possible this effort will be success.

4. CONCLUSION

1. The empowerment of indigenous people for giving legal protection to Indonesian traditional knowledge may be performed by applying a model continuously, the model in this for indigenous people to take a part
actively to promote and protect the traditional knowledge, supported by many linked institution namely National Government, Directorate General of IPR, Local Government, Industrial and Commercial institution, Banking, Board of National / Local Craftsman (DEKRANAS/DA), Collage/University, Cooperative, IPR Consultant and NGO.

2. In the traditional knowledge protection program, people will be supposed as a subject who have an important role in the effort of legal protection and traditional knowledge preservation. To promote and protect the traditional knowledge, people really needed much supports are as follow:
   a. Socialization and Legal Protection
   b. Empowerment, Enforcement and Promotion Program
   c. Capital aids, facilities and incentives
   d. Management, marketing and technical training and law enlightenment
   e. Supports, attention and coordination with any linked institution (as above).

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