

CHAPTER ONE

INTRODUCTION

A. Background

Indonesia, as one of the developing countries, is an archipelago of more than 13.466 island where each island has customs, habits, and cultural diversity with its territory respectively.¹ Cultural diversity in this area is seen easily on the geographical, socio cultural, ethnic, and religious aspects. Indonesia has a rich cultural heritage, good traditional knowledge with huge potential to generate a large variety of works and traditions from all regions in Indonesia from Sabang to Merauke 900 where there are more tribes scattered in 33 provinces in Indonesia.²

The Preamble of 1945 had already confirmed that the purpose of the establishment of the State of Indonesia to protect all the spilled blood of Indonesia and advance the general welfare. With the purpose , then the task of the State is to intervene and protect the general welfare. This Include by providing protection to traditional knowledge and culture, that belongs to the nation of Indonesia since ancient times.

¹Ridwan Lasabuda, Regional Development in Coastal and Ocean in Archipelago Perspective of The Republic Indonesia, Jurnal Ilmiah Platax, ISSN: 2302-3589 Vol. 1-2, Januari 2013 , P.9
<https://ejournal.unstrat.ac.id/index.php/platax/article/download/1251/1019>. Diakses tanggal 15 Januari 2018.

²Lembaga Pengkajian Hukum Indonesia, FHUI, 2005, *Kepentingan Negara Berkembang Terhadap Hak Atas Indikasi Geografis Sumber Daya Genetik dan Pengetahuan Tradisional*, Depok, p.7

Traditional knowledge of Traditional cultural expression is regulated in Act No. 28 by 2014 about copyright, Act No. 28 of 2014 about copyright in article 38 paragraph (1) that states "*copyright and traditional cultural expressions are held by state,*³paragraph (2) *the State is obligated to inventory, keep, and maintain traditional cultural expressions as referred to in paragraph (1)*⁴.the concept of traditional knowledge is closely associated with the Regional as the "owner" of traditional knowledge, so that local governments either province or district/city holds important duties and functions in its protection. The Organization of the Government of the autonomous region in concept reaffirms the duties and functions of the Government that those powers are divided between the Central Government, provincial governments and district/city governments.

Based on law No. 13 year 2012 about the PrivilegedSpecial Regionof Yogyakarta, the name "Province of Special Region of Yogyakarta" changed into Special Region of Yogyakarta by eliminating the word Province. Special Region of Yogyakarta as a city that is commonly called "student city" which is a city rich in arts and culture.

The protection of the arts and culture are regulated in the law No. 13 year 2012 about PrivilegedSpecial Regionof Yogyakarta. This is regulated in article 31: Paragraph (1) *cultural Authority as referred to in article 7 paragraph (2) Letter c is organized to maintain and develop the results of inventiveness, taste, karsa, and works in the form of knowledge, values, norms, customs, objects, art, and traditions rooted in sublime community DIY*⁵, Paragraph (2)*Provisions concerning theculturalauthorityas referred to*

³ Article 8 Paragraph 1 Law number 28 year 2014 about copyright

⁴ Article 38 Paragraph 2 Law number 28 year 2014 about copyright

⁵Article 31 Paragraph 1 Law Number 13 year 2012 on Keistimewaan Daerah Istimewah Yogyakarta

in paragraph(1) shall be regulated in Regional Regulations of Privileged Yogyakarta (Perdais).

The next set in the Regional Regulations of Privileged Yogyakarta Number 1 of 2013 about authority in the Affairs of the Privileged Special Region of Yogyakarta, in article 34 until article 44 regulating the procedures for the implementation of the protection of cultural in the Special Region of Yogyakarta.\

As we know batik is a textile product with a special design that is a hallmark of Indonesia; Coto Makassar, Gudeg indicates a typical food products of Makassar and Jogjakarta; Reog Ponorogo and Pendet Dance is the traditional art of Ponorogo and Bali; Tuguran is one of the wedding ceremony outfit of Daerah Istimewa Yogyakarta.⁶

It all is the corpus of traditional wisdom of Indonesia. In practice, conflicts frequently arise between the state and Regional levels which recognizes ownership of traditional knowledge, one of which is the conflict between states is Indonesia and Malaysia about Indonesian culture that is often claimed as the culture of Malaysia.

As a country that is geographically adjacent and have similar culture, it can not be denied the possibility of a cculturation between the two nations. However, in the conflict that occurred in this case, it was not about the cultural similarities due to acculturation but rather the claims or the recognition or robbery committed against Indonesian culture Malaysia, one of which is a Batik Motif Parang from Yogyakarta claims by Government of Malaysia.⁷

⁶Agus Sardjono, 2004, *Pengetahuan Tradisional Studi Mengenai Perlindungan HKI Atas Obat-obatan*, FH Universitas Indonesia, p. 7

⁷Anies Baswedan “Menelusuri Konflik Indonesia-Malaysia” Vol 5, Oct 2010. P.4

A. Problem of Research

1. What are the role by the Special Region of Yogyakarta government on protecting of traditional knowledge ?
2. How is the mechanism to determine a traditional knowledge ?

B. Objective of Research

Based on the formulation of the problem, the purpose of study, namely:

1. To figure out the Implementation of the role by the Special Region of Yogyakarta government on protecting traditional knowledge.
2. To find out the mechanism to determine traditional knowledge.

C. Benefit of Research

1. The research will give benefits to science, especially the science of law. Moreover, until now there is not much thesis or discussion about the role of Special Region of Yogyakarta Government on protecting traditional knowledge.

The research will give information and suggestion to the parties who relate to the thesis and will also be usefull to the society, go