UNIVERSITAS INDONESIA

PENTINGNYA PERLINDUNGAN HUKUM TERHADAP BATIK JAWA DALAM EKONOMI KREATIF DITINJAU DARI HUKUM PERDATA INTERNASIONAL

SKRIPSI

PRAJNA PRADIPTA R.

0606080611

FAKULTAS HUKUM

PROGRAM STUDI ILMU HUKUM

DEPOK

JULI 2012

UNIVERSITAS INDONESIA

PENTINGNYA PERLINDUNGAN HUKUM TERHADAP BATIK JAWA DALAM EKONOMI KREATIF DITINJAU DARI HUKUM PERDATA INTERNASIONAL

SKRIPSI

Diajukan sebagai salah satu syarat untuk memperoleh gelar Sarjana Hukum

PRAJNA PRADIPTA R.

0606080611

FAKULTAS HUKUM

PROGRAM STUDI ILMU HUKUM

KEKHUSUSAN VI

DEPOK

JULI 2012

HALAMAN PERNYATAAN ORISINALITAS

Skripsi ini adalah hasil karya saya sendiri,

dan semua sumber baik yang dikutip maupun yang dirujuk

telah saya nyatakan dengan benar.

Nama	: Prajna Pradipta R.
NPM	: 0606080611
Tanda Tangan	: 
Tanggal	: 06 Juli 2012

HALAMAN PENGESAHAN

Skripsi ini diajukan oleh	:
Nama	: Prajna Pradipta R.
NPM	: 0606080611
Program Studi	: Ilmu Hukum
Judul Skripsi	: Pentingnya Perlindungan Hukum Terhadap Batik Jawa Dalam Ekonomi Kreatif Ditinjau dari Hukum Perdata Internasional

Telah berhasil dipertahankan di hadapan Dewan Penguji dan diterima sebagai bagian persyaratan yang diperlukan untuk memperoleh gelar Sarjana Hukum pada Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Indonesia.

DEWAN PENGUJI

Pembimbing I	: Lita Arijati, S.H., LL.M.	(.....)
Pembimbing II	: Yu Un Oppusunggu, S.H., LL.M.	(.....)
Penguji	: Prof. Dr. Zulfa D. Basuki, S.H., M.H.	(.....)
Penguji	: Fatmah Jatim, S.H., LL.M.	(.....)
Penguji	: Dr. Mutiara Hikmah, S.H., M.H.	(.....)

Ditetapkan di : Depok

Tanggal : 6 Juli 2012

KATA PENGANTAR

Puji dan syukur penulis panjatkan ke hadirat Allah SWT atas selesainya skripsi ini : PENTINGNYA PERLINDUNGAN HUKUM TERHADAP BATIK JAWA DALAM EKONOMI KREATIF DITINJAU DARI HUKUM PERDATA INTERNASIONAL. Yang mana semua ini tidak akan mungkin dapat penulis lakukan tanpa restu dan bimbingan-Nya.

Skripsi ini membahas mengenai perkembangan batik dan perannya dalam ekonomi kreatif di Indonesia serta perlindungan hukum yang sebaiknya diberikan terhadap batik agar dapat dilestarikan sebagai warisan budaya bangsa Indonesia khususnya Jawa dan perlindungan hukum terhadap batik agar dapat berkembang sebagai komoditas perdagangan dalam ekonomi kreatif yang dapat meningkatkan perekonomian rakyat. Lebih lanjut, skripsi ini membahas peran hukum perdata internasional dalam menentukan perlindungan hukum terhadap batik dalam ekonomi kreatif. Skripsi ini disusun sebagai prasyarat kelulusan dari Fakultas Hukum Universitas Indonesia Program Kekhususan VI mengenai Hukum tentang Hubungan Transnasional.

Sebagai manusia biasa, penulis menyadari bahwa tidak ada sesuatu yang sempurna, dan oleh karenanya penulis sangat terbuka terhadap kritikan dan masukan yang diberikan terkait dengan skripsi ini. Penulis juga menyadari bahwa, bantuan dan bimbingan dari berbagai pihak dari masa perkuliahan sampai pada penyusunan skripsi ini, memungkinkan terselesaikannya skripsi ini. Oleh karena itu tak lupa penulis sampaikan terima kasih yang sebesar-besarnya kepada:

1. Papa Erwin Mardjuni, Mama Jusiantin Lukitariningsih, dan Mas Weka Ning Mahardhika *my best friends* yang telah banyak memberi dukungan, doa, dan bimbingan selama hidup penulis, yang menjadi tempat penulis berkeluh kesah dalam menghadapi permasalahan baik dalam penulisan skripsi ini maupun

dalam kehidupan sehari-hari. Terima kasih atas dorongan dan semangat yang diberikan tanpa henti dan terima kasih karena selalu memacu penulis dalam segala hal.

2. Ibu Lita Arijati, S.H., LL.M. selaku pembimbing I yang telah menyediakan waktu, tenaga, dan pikiran untuk membimbing penulis dalam penyusunan skripsi dengan memberikan masukan dan perbaikan tentang isi dari skripsi ini dari tahap awal hingga selesai dan telah memberi banyak dukungan terhadap penulis dalam penyelesaian skripsi ini.
3. Bapak Yu Un Oppusunggu, S.H., LL.M. selaku pembimbing II yang telah menyediakan waktu, tenaga, dan pikiran untuk membimbing penulis dalam penyusunan awal skripsi ini dan memberi masukan kepada penulis.
4. Mbak Priskila Penasthikha, S.H. yang telah menyediakan waktu untuk memberi banyak masukan kepada penulis dalam penyelesaian skripsi ini hingga selesai dan memberi dukungan kepada penulis.
5. Ibu Tiurma M. Pitta Allagan, S.H., M.H. yang telah memberi dukungan terhadap penulis untuk terselesaikannya skripsi ini dan telah mengajar penulis selama menempuh studi di jurusan Hukum tentang Hubungan Transnasional.
6. Prof. Dr. Zulfa D. Basuki, S.H., M.H., Ibu Fatmah Jatim, S.H., LL.M., dan Ibu Mutiara Hikmah, S.H., M.H. yang telah memberi masukan dan perbaikan terhadap isi dari skripsi ini dan telah mengajar penulis selama menempuh studi di jurusan Hukum tentang Hubungan Transnasional.
7. Seluruh pengajar pada program studi Hukum tentang Hubungan Transnasional yang telah mengajar dan memberi wawasan baru kepada penulis selama menempuh studi di jurusan Hukum tentang Hubungan Transnasional.
8. Ibu Melania Kiswandari, S.H., ML.I. selaku pembimbing akademik yang telah memberikan bimbingan dan nasehat bagi penulis selama penulis menempuh studinya di Fakultas Hukum Universitas Indonesia.

9. Pak Indra selaku staf biro pendidikan untuk angkatan 2006 yang telah banyak penulis repotkan selama masa perkuliahan di FHUI khususnya selama penulisan skripsi ini.
10. Pak Selam selaku staf biro pendidikan yang telah banyak membantu penulis selama masa perkuliahan dan penulisan skripsi.
11. Segenap karyawan perpustakaan FHUI dan perpustakaan Fakultas Ilmu Budaya yang telah membantu penulis dalam mengumpulkan data untuk penulisan skripsi ini.
12. Bapak Y.W. Junardy selaku Presiden Komisari PT Rajawali Corporation yang telah meluangkan waktunya untuk memberi masukan dan melakukan diskusi dengan penulis tentang skripsi ini.
13. Gusti Pembayun yang telah meluangkan waktunya untuk mempertemukan penulis dengan para pakar batik yang telah banyak membantu dalam penulisan skripsi ini.
14. Ibu Nancy Margried selaku CEO dan Co-Founder Piksel Indonesia yang telah memberikan waktunya untuk melakukan wawancara dengan penulis dan memberi banyak informasi terkait dengan skripsi ini.
15. Dr. Kahfiati Kahdar, M.A., Dr. Ratna Panggabean, M.Sn, Drs Achmad Haldani D, M.Sn, dan Ir. Ahdiar Romadoni, MBA., yang telah meluangkan waktu dan tenaga untuk melakukan wawancara dengan penulis dan memberi masukan dan wawasan terkait industri kria dan bantuan berupa bahan-bahan untuk penulisan skripsi ini.
16. Ibu Neneng Iskandar selaku pakar batik Indonesia yang telah meluangkan banyak waktu untuk melakukan wawancara dengan penulis dan membuka wawasan penulis tentang batik.
17. Ibu Suliantoro, Ibu Oedharjo Diran, K.R.A Hardjosoewarno yang telah meluangkan waktu dan membagi wawasan dengan penulis terkait dengan batik.

18. Ibu Anita Asmaya Sanin selaku *Production Direction* Alleira Batik yang telah meluangkan waktunya untuk melakukan wawancara dengan penulis dan memberi masukan dari sudut pandang bisnis batik terhadap penulis.
19. Bapak Masanori Nagaoka UNESCO *Culture Programme Specialist* yang telah meluangkan waktunya untuk melakukan wawancara dengan penulis yang sangat membantu dalam penulisan skripsi ini.
20. Professor Michael Blakeney yang telah meluangkan waktunya untuk korespondesi melalui *e-mail* yang memberi informasi yang berguna bagi penulis dalam penulisan skripsi ini.
21. Bapak Rudolf Smend yang telah meluangkan waktunya untuk korespondensi melalui *e-mail* yang telah membantu dalam penulisan skripsi ini.
22. Bapak Peter Jaszi yang telah meluangkan waktunya untuk korespondensi melalui *e-mail*.
23. Bapak Ahmad Mahendra, Bapak Agus Priyono, Ibu Hikmah Fitria, Bapak Wahyu Jati Pramanto, Bapak Sarwono, dan Bapak Arif Wibisono yang telah meluangkan waktu dan tenaga untuk melakukan wawancara dengan penulis yang memberi banyak informasi yang bermanfaat bagi penulisan skripsi ini.
24. Bude Anna Djajoesman, Eyang Putri Djajoesman, dan Mbak Nina yang selalu memberi dukungan dan hiburan kepada penulis selama penulisan skripsi ini dan setiap waktu.
25. Tante Lalita Mardjuni dan Tante Restu Mardjuni yang selalu memberi doa dan dukungan kepada penulis terutama saat penulisan skripsi ini.
26. Eyang Djajoesman, Kakek Mardjuni, dan Nenek Aisha Mardjuni *though our time together was short, thank you for everything. Thank you for being my inspiration. Somewhere someday I will see you again.*
27. Tante Heni dan Tante Rahayu Yoesmintarti yang telah banyak meluangkan waktu untuk memberi nasehat dan dukungan terhadap penulis dalam menghadapi permasalahan dan selalu memberi dorongan untuk tetap optimis.

28. Ibu Tri Iswardani yang telah banyak meluangkan waktu untuk mendengarkan keluh kesah penulis, menjadi teman bicara penulis, dan memberi dukungan kepada penulis terutama dalam penulisan skripsi ini.
29. Pak Nur dan Pak Ali yang selalu mengantar dan menemani penulis dalam mencari data dan wawancara serta selama masa perkuliahan penulis.
30. Sahabat dan teman-teman yang telah menjadi bagian dari kehidupan penulis di FHUI dengan segala suka dan duka: David Sinaga (*thank you for listening to me all the time)*, Namira Ali Umar, Yuli Siagian, Donda Simanjuntak, Angel Brigitta, Rafika Widyatama, Lanang Tjokrokusumo, Ade Rizky Amelia, Ary T.J, Annisa Ulfah, Deta Marshavidia, Stephanie J.M, Karina A.T, Febriandina, Farah Fadillah.
31. Tabitha Gultom, *thank you for being a great friend. You're gone but not forgotten.*
32. Gerilyawan Octabrian, Tasya Anindita, Rubyeta Siswono, Desiree Kandou, dan Alexander Rosali yang telah banyak mendukung penulis terutama dalam penyelesaian skripsi ini.
33. Teman-teman PK VI yang telah memberi warna dalam masa studi penulis di Fakultas Hukum Universitas Indonesia: Stephanie J.M, Annisa Ulfah, Valiska Nathania, Aruni Larasati, Albertha Dita, Dharma Rozali Azhar, Biondi Firmansyah, Grace Fan, Bimo Harimahesa, Dimas Akbar, Gulardi Nurbintoro, Andreas Aghyp, Nico Angelo Moduto, Lidyar Indhira Putri, Muhammad Naufal Fileindi, Dhika Ashita Haruni, Mario Wibowo, Nadia Efanie, Ni Putu Anggraeni, Lewie Aga Basoeki, Dinda Nurasih, Eva Fatima Fauziah, Hanum Ariana Tobing, Rininta Saraswati, Wayan Adhi Prastana, Jenny Maria Doan, Miftah Farid Hanggawan, Harza Sandityo, Haryo Kusumastito, dan Tamia Dian. *Thank you for the late night chats and laughter, I had the best time with all of you.*
34. Aloysius Selwas Taborat, terima kasih atas nasehat dan dukungannya selama proses penulisan skripsi ini. Terima kasih atas bimbingan yang diberikan kepada penulis agar tetap semangat dalam menyelesaikan skripsi ini.

35. Teman-teman *Last Generation* yang telah banyak memberi dukungan dan semangat dalam tahun-tahun terakhir masa studi penulis di Fakultas Hukum Universitas Indonesia.
36. Kak Mada dan Kak Petra terima kasih banyak atas dukungan dan bantuannya selama ini.

Dan semua pihak yang telah membantu dan mendukung penulis selama ini, yang tidak bisa penulis sebutkan satu persatu.

Depok, Juli 2012

Prajna Pradipta R.

HALAMAN PERNYATAAN PERSETUJUAN PUBLIKASI

TUGAS AKHIR UNTUK KEPENTINGAN AKADEMIS

Sebagai sivitas akademik Universitas Indonesia, saya yang bertanda tangan di bawah ini:

Nama	: Prajna Pradipta R.
NPM	: 0606080611
Program Studi	: Ilmu Hukum
Program Kekhususan	: Hukum tentang Hubungan Transnasional
Fakultas	: Hukum
Jenis Karya	: Skripsi

demi pengembangan ilmu pengetahuan, menyetujui untuk memberikan kepada Universitas Indonesia **Hak Bebas Royalti Noneksklusif (Non-exclusive Royalty-Free Right)** atas karya ilmiah saya yang berjudul:

PENTINGNYA PERLINDUNGAN HUKUM TERHADAP BATIK JAWA DALAM EKONOMI KREATIF DITINJAU DARI HUKUM PERDATA INTERNASIONAL

beserta perangkat yang ada (jika diperlukan). Dengan Hak Bebas Royalti Noneksklusif ini Universitas Indonesia berhak menyimpan, mengalihmedia/format-kan, mengelola dalam bentuk pangkalan data (*database*), merawat, dan memublikasikan tugas akhir saya selama tetap mencamtumkan nama saya sebagai penulis/pencipta dan sebagai pemegang Hak Cipta.

Demikian pernyataan ini saya buat dengan sebenarnya.

Dibuat di : Depok

Pada tanggal : 06 Juli 2012

Yang menyatakan

(Prajna Pradipta R.)

ABSTRAK

Nama : Prajna Pradipta R.
Program Studi : Ilmu Hukum
Judul : Pentingnya Perlindungan Hukum Terhadap Batik Jawa dalam Ekonomi Ditinjau dari Hukum Perdata Internasional

Skripsi ini membahas tentang peran hukum dalam melestarikan batik Jawa sebagai ekspresi budaya tradisional dan memberi jaminan hukum bagi batik dalam ekonomi kreatif untuk mencegah tindakan apropriasi terhadap batik. Penelitian ini adalah penelitian kepustakaan-normatif dengan menggunakan data sekunder. Hasil penelitian menyarankan bahwa perlindungan hukum terhadap batik dapat dilakukan dengan menggunakan indikasi geografis atau Batikmark karena sifatnya yang tidak terbatas oleh waktu, memberi tanda orisinalitas batik, tidak membatasi kreativitas masyarakat budaya, dan dapat digunakan secara komunal.

Kata Kunci:
Batik, ekspresi budaya tradisional, indikasi geografis

ABSTRACT

Name : Prajna Pradipta R.
Study Program : Transnational Law
Title : Legal Protection in Creative Economics Setting: Legal Protection for Javanese Batik From Private International Law Perspective

The focus of this study is to analyse the role of legal protection in safeguarding Javanese batik as traditional cultural expression in creative economics setting against the act of apropriation. This study is a normative-literature research using secondary data. The conclusion of this study propose the use of geographical indications and Batikmark as a mean of legal protection for batik because both are not limited by time, signify the originality of batik, do not limit the creativity of batik, and can be used communally.

Key words:
Batik, traditional cultural expressions, geographical indications

DAFTAR ISI

DAFTAR TABEL

DAFTAR GAMBAR

DAFTAR BAGAN

DAFTAR SINGKATAN

ICHC	: Intangible Cultural Heritage Convention
IGC	: Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore
PBB	: Perserikatan Bangsa-Bangsa
TRIPs	: Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCTAD	: United Nations Conference on Trade and Development
UNESCO	: United Nations Educational, Scientific, and Cultural Organization
UUHC	: Undang-Undang Hak Cipta
WHC	: World Heritage Convention
WIPO	: World Intellectual Property Organization
WTO	: World Trade Organization

DAFTAR LAMPIRAN

BAB I
PENDAHULUAN

A. Latar Belakang Pemilihan Judul

Indonesia merupakan negara yang kaya akan ragam budaya. Keragaman budaya Indonesia dipengaruhi oleh berbagai faktor, antara lain faktor sejarah bangsa Indonesia, kondisi geografis alam Indonesia, dan kemajemukan masyarakat Indonesia. Menurut Koentjaraningrat, yang dimaksud dengan kebudayaan adalah keseluruhan sistem gagasan, tindakan dan hasil karya manusia dalam rangka kehidupan masyarakat yang dijadikan milik diri manusia dengan belajar.[1] Berdasarkan definisi tersebut dapat diartikan bahwa hampir seluruh tindakan manusia adalah wujud dari kebudayaan.[2] Konsep budaya sebagai suatu pola perilaku manusia yang diperoleh melalui proses belajar diutarakan pertama kali oleh Edward Burnett Tylor dalam bukunya *Primitive Culture*. Edward Burnett Tyler berpendapat bahwa yang termasuk sebagai budaya antara lain pengetahuan, keyakinan, kesenian, budi, hukum, dan adat istiadat.[3] Tidak jauh berbeda dengan Edward Burnett Tylor, Koentjaraningrat membagi kebudayaan menjadi tiga wujud, yaitu:[4]

1. Wujud kebudayaan sebagai suatu kompleks dari ide-ide, gagasan, nilai-nilai, norma-norma, dan peraturan;
2. Wujud kebudayaan sebagai suatu kompleks aktivitas serta tindakan berpola dari manusia dalam masyarakat;
3. Wujud kebudayaan sebagai benda-benda hasil karya manusia.

[1] Koentjaraningrat, *Pengantar Ilmu Antropologi*, cet.8, (Jakarta: Rineka Cipta, 2002), hal. 180.

[2] *Ibid.*

[3] J. Jokilehto, *"Definition Of Cultural Heritage References To Documents In History,"* cif.icomos.org/pdf_docs/Documents on line/Heritage definition.pdf, diakses 5 Juni 2012.

[4] Koentjaraningrat, *op.cit.*, hal. 186-187.

Ketiga wujud kebudayaan menurut Koentjaraningrat tersebut merupakan satu-kesatuan yang tidak terpisahkan dan merupakan bagian penting bagi individu maupun masyarakat, sehingga kebudayaan umumnya diwariskan secara turun-temurun dari satu generasi kepada generasi berikutnya. Oleh karena itu, kebudayaan merupakan perwujudan ikatan antara individu dengan masyarakat yang membentuk suatu bangsa. Hal ini disebabkan karena kebudayaan merupakan identitas bangsa dan perwujudan ekspresi dari suatu bangsa. Selain sebagai identitas bangsa, *United Nations Educational, Scientific, and Cultural Organization* (UNESCO) melihat kebudayaan sebagai suatu sumber kreativitas dan inovasi bangsa yang terus berkembang.[5] UNESCO menambahkan bahwa kebudayaan memiliki karakter yang lokal. Artinya walaupun kebudayaan memiliki unsur yang tak berwujud, kebudayaan berakar pada suatu wilayah tertentu yang terkait dengan sejarah yang terjadi di wilayah tersebut.[6] Menilik karakter kebudayaan yang lokal dan diwariskan dari satu generasi ke generasi berikutnya, Piagam Pelestarian Pusaka Indonesia[7] membagi warisan kebudayaan atau pusaka Indonesia menjadi tiga bagian, yaitu (i) pusaka alam yang merupakan bentukan alam yang istimewa, (ii) pusaka budaya yaitu hasil cipta, rasa, dan karsa dari seluruh bangsa Indonesia, dan (iii) pusaka saujana yaitu gabungan dari pusaka alam dan pusaka budaya yang tergabung dalam satuan ruang dan waktu.

Kebudayaan bangsa Indonesia adalah kebudayaan yang telah berkembang sejak zaman prasejarah. Hal ini dikarenakan, bangsa Indonesia telah menetap di kepulauan Indonesia sejak zaman Prasejarah.[8] Penemuan topeng perunggu di Goa Made di Pulau Jawa yang berasal dari tahun 3000 SM menunjukkan bahwa sejarah

[5]UNESCO(A), *"The Power of Culture for Development,"* http://unesdoc.unesco.org/images/0018/001893/189382e.pdf , diunduh 3 November 2010.

[6] *Ibid.*

[7] Piagam Pelestarian Pusaka Indonesia merupakan piagam yang dideklarasikan pada tahun 2003 yang dikelola oleh Jaringan Pelestarian Pusaka Indonesia dan International Council on Monuments and Cites (ICOMOS) Indonesia dengan didukung oleh Kementerian Kebudayaan dan Pariwisata Indonesia. Piagam Pelestarian Pusaka Indonesia dapat diakses melalui http://www.international.icomos.org/charters/indonesia-charter.pdf , diunduh 16 Februari 2010.

[8] Yayasan Harapan Kita, *Indonesia Indah Buku ke-8 Batik*, (Jakarta: Perum Percetakan Negara Republik Indonesia, 1997), hal.2.

kebudayaan logam tertua bagi bangsa Austronesia di kawasan Asia Tenggara berada di Indonesia.[9] Berdasarkan penemuan tersebut, diperoleh kesimpulan bahwa kebudayaan perunggu berasal dari Jawa dan kemudian menyebar ke wilayah lain.[10] Selanjutnya, berdasarkan temuan arkeologi, ditemukan fakta bahwa bangsa Indonesia, khususnya masyarakat Sumatera dan Jawa, telah melakukan hubungan dengan wilayah Timur Tengah.[11] Hal ini diperkuat dengan pendapat dari ahli genetik Universitas Oxford Stephen Oppenheimer yang berpendapat bahwa pelaut Austronesia yang telah melakukan hubungan dengan Timur Tengah berasal dari Nusantara.[12] Penemuan-penemuan arkeologi ini menunjukkan bahwa bangsa Indonesia telah memiliki kebudayaan yang tinggi sejak zaman prasejarah. Kebudayaan bangsa Indonesia yang sudah berlangsung lama ini bukan merupakan warisan dari nenek moyang bangsa Indonesia semata. Namun, kebudayaan bangsa Indonesia merupakan kebudayaan yang masih hidup dan terus mengalami perkembangan di antara bangsa Indonesia.

Kebudayaan yang dihasilkan oleh bangsa Indonesia memperoleh pengaruh dari kekayaan alam dan kondisi geografis Indonesia. Iklim tropis yang dimiliki oleh Indonesia mendorong masyarakat Indonesia untuk menyesuaikan kegiatannya dengan kondisi alam.[13] Kondisi iklim ini mengakibatkan adanya pergantian kegiatan hidup masyarakat dari bertani, membuat kerajinan, berlayar mencari ikan, berdagang, dan kegiatan lainnya yang disesuaikan dengan irama perubahan musim.[14] Contohnya adalah dengan penanaman kapas sebagai tanaman tambahan oleh petani setelah

[9] Irawan Djoko Nugroho, *Majapahit Peradaban Maritim Ketika Nusantara Menjadi Pengendali Pelabuhan Dunia,* (Jakarta: Yayasan Suluh Nuswantara Bakti, 2010), hal. 3. Sebelum ditemukan topeng perunggu di Goa Made, diyakini bahwa kebudayaan logam tertua bangsa Austronesia di Asia Tenggara berawal dari Dong-son di Vietnam.

[10] *Ibid.*

[11] *Ibid.* hal. 4

[12] *Ibid.* hal. 3

[13] Yayaysan Harapan Kita, *loc. cit*

[14] *Ibid,.*

musim panen padi. Kapas yang dihasilkan kemudian akan digunakan sebagai bahan mentah pembuatan tenun oleh para wanita. Kain yang dihasilkan dapat menghasilkan pendapatan tambahan bagi masyarakat. Kebudayaan Indonesia diwujudkan di antaranya melalui seni drama, musik tradisional, seni arsitektur, cerita rakyat, kain atau tekstil, dan masih banyak lagi.

Tekstil merupakan salah satu wujud kebudayaan yang memiliki makna yang penting bagi bangsa Indonesia. Di berbagai wilayah Indonesia, kebudayaan yang dihasilkan memiliki corak yang berbeda-beda antar suku bangsa. Namun, di antara keragaman budaya tersebut terdapat persamaan makna sosial yang signifikan yang dituangkan dalam wujud tekstil.[15] Makna sosial yang terdapat dalam tekstil di berbagai wilayah Indonesia terkait dengan filosofi, kepercayaan, dan nilai spiritual yang dianut oleh masyarakat Indonesia dari berbagai suku bangsa. Melalui sehelai tekstil dituangkan perlambangan simbolis tahapan kehidupan manusia.[16] Makna simbolik dalam tekstil di Indonesia pada umumnya diekspresikan melalui warna dan ragam hias.[17] Oleh karena itu tekstil digunakan dalam ritual-ritual di Indonesia. Lebih lanjut, tekstil juga dipandang sebagai artefak yang suci. Di berbagai suku bangsa di Indonesia tekstil merupakan perlambangan sisi feminin manusia. Kemampuan untuk menenun tidak jarang digunakan sebagai standar kesiapan seorang wanita untuk menikah.[18] Jan Wisseman Christie memaparkan makna tekstil bagi masyarakat Indonesia tercatat pada Piagam Sima yang berasal dari awal abad 9.[19] Piagam yang ditulis pada sebuah batu dan plat tembaga ini menyatakan bahwa tekstil merupakan pemberian yang diberikan kepada raja atau pejabat tinggi di Pulau Jawa dalam upacara resmi.[20] Selanjutnya, Maria Wronska-Friend, seorang antropolog Inggris

[15] Michael Hitchcock (A), *Indonesian Textiles*, (Singapura: Periplus Edition, 1991), hal. 123.

[16] *Ibid.*

[17] Pepin van Roojen, *Batik Design*, (Amsterdam: The Pepin Press, 2001), hal. 9.

[18] Hitchcock (A), *op.cit.*, hal. 128.

[19] *Ibid.*, hal. 18-19.

[20] *Ibid.*

menyatakan di dunia barat pahatan atau lukisan merupakan suatu medium untuk mengekspresikan suatu nilai artistik.[21] Sedangkan, di Indonesia keterampilan kreatif berupa seni rupa dituangkan dalam sebuah tekstil.

Batik[22] merupakan salah satu wujud kebudayaan berupa tekstil yang paling identik dengan Indonesia. Batik merupakan suatu bentuk kerajinan tangan yang mengaplikasikan pola atau motif pada suatu kain dengan menggunakan perintang warna berupa malam atau lilin panas. Malam digunakan untuk melapisi pola yang dibentuk pada kain, dari resapan zat pewarna. Kata batik sendiri merujuk pada teknik pembuatannya.[23] Teknik membatik hanya dapat diterapkan di atas bahan yang terbuat dari serat alami seperti katun, sutra, maupun wol.[24]

Seni batik merupakan suatu bentuk kerajinan tekstil dengan nilai estetika tinggi yang telah hidup sebagai bagian dari kebudayaan Indonesia sejak dahulu. Seni batik telah berkembang di Jawa sebelum agama Hindu masuk ke Indonesia.[25] Dokumen kuno dan catatan para saudagar asing memperkuat pernyataan bahwa di Pulau Jawa kain bermotif telah diproduksi. Wang Dayuan seorang saudagar Cina dari Dinasti Yuan yang mengunjungi Asia Tenggara pada abad ke-14, menulis dalam bukunya *Daoyi Zhilue* bahwa masyarakat di Pulau Jawa memproduksi kain dengan motif yang indah dan kaya warna.[26] Indikasi bahwa batik merupakan jenis kain yang

[21] Maria Wronska-Friend, *"Javanese Batik The Art of Wax Design"* dalam *Batik The Rudolf G. Smend Collection*, (Singapura: Tuttle Publishing, 2006), hal. 44.

[22] Batik yang akan menjadi fokus pembahasan dalam skripsi ini adalah batik tulis, batik cap, dan batik kombinasi tulis dan cap yang berasal dari Pulau Jawa. Hal ini disebabkan di Pulau Jawa, seni batik mengalami perkembangan menjadi seni adiluhung.

[23] Aep S. Hamidin, *Batik Warisan Budaya Asli Indonesia*, cet.1, (Yogyakarta: Narasi, 2010), hal. 7.

[24] *Ibid.*

[25] Hasil wawancara dengan Ibu Suliantoro. Ibu Suliantoro adalah seorang pakar batik dan pengurus Paguyuban Sekar Jagad Yogyakarta. Wawancara dilakukan pada 1 Mei 2010. Berdasarkan pendapat ini, maka diperkirakan batik telah dikenal oleh masyarakat Jawa sebelum abad 4 M.

[26] Lee Chor Lin, *Batik Creating an Identity*, ed.2, (Singapura: National Museum of Singapore, 2007), hal. 18.

dimaksud oleh Wang Dayuan adalah pernyataan Wang Dayuan bahwa kain yang diproduksi di Pulau Jawa memiliki motif yang tidak dapat dimasukkan oleh warna.[27]

Seni batik dapat ditemukan di beberapa wilayah di Indonesia. Seni batik yang paling dikenal adalah batik yang dihasilkan di Pulau Jawa. Hal ini disebabkan bahwa di Pulau Jawa batik berkembang menjadi suatu seni adiluhung. Batik merupakan suatu kebudayaan yang hidup dalam masyarakat Indonesia, khususnya masyarakat Jawa. Ragam hias batik merupakan ekspresi yang menyatakan keadaan diri dan lingkungan penciptanya.[28] Berdasarkan ragam hiasnya, Batik Jawa dibedakan menjadi (i) batik pedalaman yaitu batik yang dihasilkan di Solo dan Yogyakarta, dan (ii) batik pesisir yaitu batik yang dihasilkan di daerah utara Pulau Jawa seperti di Pekalongan, Cirebon, dan Demak. Lebih lanjut, Batik merupakan suatu filsafat hidup bagi masyarakat Jawa. Filsafat hidup tersebut, tidak hanya tertuang dalam ragam hias batik tapi juga pada proses pembuatan batik. Batik memiliki ikatan yang kuat dengan kebudayaan Jawa lainnya seperti seni wayang, seni gamelan, dan seni tari Jawa. Contoh dari hubungan antara batik dengan seni tari Jawa adalah pada motif batik *ukel*. Motif ukel berasal dari gerakan tangan yang melekung pada seni tari Jawa. Berdasar gerakan tersebut, maka terciptalah motif batik ukel yaitu motif yang memiliki bentuk melekung yang dijadikan sebagai suatu motif latar dalam batik.[29] Batik merupakan suatu bentuk kreativitas. Selain itu batik memiliki peran sebagai simbol status dalam masyarakat.[30] Batik juga memiliki peran sebagai suatu perlambangan tahapan hidup seseorang. Hal ini disebabkan adanya suatu tradisi dimana motif batik tertentu hanya dapat digunakan dalam tahap hidup tertentu

[27] *Ibid.*

[28] Yayasan Harapan Kita, *op. Cit.*, hal. 5.

[29] Iwan Tirta (A), *Batik A Play of Light and Shades*, cet.2, (Jakarta: P.T. Gaya Favorit Press, 2009), hal. 66.

[30] Pembahasan lebih lanjut tentang peran batik sebagai status sosial dalam masyarakat akan dibahas lebih lanjut dalam Bab 2.

seseorang seperti pernikahan, pada kehamilan seorang wanita, ataupun pada saat kematian.[31]

Seperti sudah disebutkan sebelumnya, ragam hias atau motif yang terdapat pada batik memiliki makna-makna khusus yang dipengaruhi oleh lingkungan dan norma-norma yang hidup dalam masyarakat. Merujuk pada pengaruh sejarah pada kebudayaan Indonesia, ragam hias yang terdapat dalam batik pun banyak dipengaruhi oleh sejarah Jawa dan Indonesia. Hal ini tampak pada batik yang dihasilkan pada era-era tertentu dalam sejarah akan memiliki keunikan dan ciri khas masing-masing yang menyumbang kosa kata dalam motif. Batik pedalaman banyak dipengaruhi oleh kehidupan keraton dan agama Budha-Hindu-Islam yang dianut oleh kerajaan-kerajaan di Pulau Jawa. Motif batik pedalaman umumnya merupakan simbol-simbol yang terikat oleh aturan keraton. Agama Hindu melahirkan sistem kasta dalam masyarakat Jawa.[32] Melalui sistem kasta ini, posisi raja dalam masyarakat semakin tinggi. Hal ini selanjutnya melahirkan motif-motif batik larangan[33] dalam batik pedalaman. Di lain pihak, wilayah utara Pulau Jawa yang tidak berada di bawah pengaruh feodal keraton memiliki motif batik yang naturalis. Motif batik pesisir merupakan ekspresi bebas masyarakat. Motif batik pesisir juga diperkaya oleh akulturasi budaya yang terjadi dengan budaya Cina, Belanda, dan Jepang pada masa kolonial. Memasuki era kemerdekaan, motif batik yang banyak berkembang adalah motif Batik Indonesia. Batik Indonesia adalah motif batik yang merupakan perpaduan motif batik pedalaman dengan motif batik pesisir. Motif batik Indonesia ini digunakan sebagai sarana politik untuk menimbulkan rasa persatuan bangsa dan sumber identitas bangsa sebagai negara yang baru merdeka.

[31] UNESCO Nomination Form. UNESCO Nomination Form ini dapat diakses melalui http://www.unesco.org/culture/ich/index.php?RL=00170#doc, diunduh 19 Februari 2010.

[32] Inger McCabe Elliott, *Batik Fabled Cloth Of Java*, ed.2, (Singapura: Periplus Editions, 2004), hal. 24.

[33] Motif batik larangan adalah kelompok motif batik yang berkembang dalam wilayah keraton Solo dan Jogja. Motif batik larangan hanya dapat digunakan oleh Raja dan keluarga kerajaan. Penjelasan lebih lanjut tentang motif batik larangan akan dipaparkan di Bab II.

Sebagai suatu hasil budaya, batik memiliki nilai estetika yang tinggi. Nilai estetika ini mendorong batik berkembang menjadi suatu barang dagangan. Batik sebagai barang dagangan lahir karena adanya suatu kebutuhan oleh masyarakat, khususnya di daerah pesisir Jawa.[34] Iwan Tirta dalam makalahnya yang berjudul *Quo Vadis Batik?* menyatakan bahwa dalam sejarah, batik sudah diperdagangkan sejak lama.[35] Pada mulanya, batik yang diproduksi di Jawa hanya diproduksi untuk memenuhi kebutuhan lokal.[36] Namun, produksi batik tersebut juga diproduksi untuk menarik minat asing.[37] Bukti sejarah menunjukkan bahwa perdagangan batik tersebut dilakukan baik antar daerah dan antar pulau di Indonesia maupun dengan pedagang asing yang berada di Indonesia maupun dengan melakukan ekspor ke luar negeri.

Perkembangan batik sebagai komoditas perdagangan dalam skala yang lebih besar baru terjadi pada masa akhir penjajahan.[38] Perkembangan kreatifitas batik merupakan salah satu faktor yang memicu batik menjadi komoditas perdagangan. Maraknya perdagangan batik pada masa itu menandakan lahirnya batik sebagai suatu industri. Hal ini menunjukkan bahwa sejarah memiliki peran yang besar dalam pergeseran makna batik sebagai budaya menjadi suatu komoditas. Pergeseran makna batik sebagai suatu komoditas perdagangan tidak dapat dihindarkan. Kebudayaan dan ekonomi memiliki suatu hubungan timbal balik yang saling mempengaruhi. Perdagangan batik membantu proses perkembangan batik sebagai budaya dan

[34] Yayasan Harapan Kita, *op. Cit.*, hal. 7.

Perdagangan batik pada mulanya banyak dilakukan oleh masyarakat jelata daerah pesisir Pulau Jawa untuk memenuhi kebutuhan ekonomi. Batik yang dihasilkan biasanya dijual satuan atau ditukar dengan bahan baku batik dan sedikit uang lebih. Selain itu, tidak jarang kegiatan pembatikan dilakukan sebagai kegiatan sampingan saat menunggu masa panen atau setelah berakhirnya masa panen. Perdagangan batik tidak umum dilakukan oleh masyarakat di lingkungan keraton karena kegiatan membatik dipandang sebagai seni yang tinggi. Lebih lanjut, adanya pandangan bahwa wanita memiliki tugas untuk menyediakan kain bagi anggota keluarga. Untuk anggota keluarga kerajaan, pembatikan juga dilakukan oleh para abdi dalem. Penjelasan lebih lanjut akan dipaparkan di Bab II.

[35] Iwan Tirta (B), *"Quo Vadis Batik?"* dalam *Building on Batik: The Globalization of a Craft Community*, (Burlington: Ashgate Publishing Company, 2000), hal. 5.

[36] Michael Hitchcock dan Wiendu Nuryanti, *"Introduction"* dalam *Building on Batik: The Globalization of a Craft Community*, (Burlington: Ashgate Publishing Company, 2000), hal. Xxiii.

[37] *Ibid.*

[38] Iwan Tirta (B), *loc. cit.*

persebar luasan pengaruh batik ke berbagai wilayah lain. Sebagai contoh, pengembangan canting cap pada abad ke-19 dilakukan atas pertimbangan komersial. Pengembangan canting cap ini ditujukan untuk memenuhi permintaan pasar di luar Pulau Jawa dan internasional akan batik. Di lain pihak, kebudayaan merupakan salah satu penggerak perekonomian negara dan merupakan sumber pemberdayaan masyarakat terutama bagi wanita. Batik sebagai kebudayaan juga memiliki peran dalam perekonomian masyarakat, seperti yang dilakukan oleh masyarakat Imogiri. Setelah gempa yang terjadi pada tanggal 27 Mei 2006, batik menjadi sarana untuk membangun kembali tatanan kehidupan korban dan pada saat yang sama melestarikan batik sebagai kebudayaan.[39]

Hubungan antara kebudayaan dan perekonomian semakin diperjelas dengan berkembangnya konsep industri kreatif pada akhir abad 20. Industri kreatif adalah industri yang mengandalkan kreatifitas individu atau masyarakat sebagai motor penggeraknya. Industri kreatif merupakan industri yang berbasis pengetahuan. Kebudayaan merupakan bagian integral dalam industri kreatif. Peran budaya dalam industri kreatif terkait dengan pengetahuan tradisional[40] yang dimiliki masyarakat. Oleh karena itu, industri berbasis budaya merupakan salah satu basis dari industri kreatif. UNESCO melihat industri berbasis budaya sebagai suatu penggerak ekonomi global.[41] Industri berbasi budaya memiliki potensi menyediakan lapangan kerja bagi masyarakat dalam jumlah yang besar. Lebih lanjut, UNESCO memberi estimasi nilai industri berbasis budaya pada tahun 2005 sebesar US$ 1,3 triliun.[42] Industri berbasis budaya dan industri kreatif dalam ruang lingkup yang lebih besar membentuk ekonomi kreatif. Ekonomi kreatif yang memanfaatkan industri kreatif sebagai basis penggeraknya juga bergantung pada pengetahuan dan kreatifitas. Oleh karena itu,

[39] *"Indonesian Textile Arts, Java Island,"* http://www.threadsoflife.com/textile, diakses 10 Juni 2012.

[40] Pengetahuan tradisional dalam konteks ini terkait dengan pengetahuan untuk melakukan produksi budaya. Penjelasan lebih lanjut tentang pengetahuan tradisional akan dipaparkan di Bab II.

[41] UNESCO (A), *op. cit.,* hal. 5.

[42] *Ibid.*

dalam ekonomi kreatif aspek sosial, budaya, teknologi, kekayaan intelektual, dan pariwisata semakin memiliki peran yang besar.[43] Walaupun konsep ekonomi kreatif relatif baru, namun hubungan antara kreatifitas dan ekonomi sudah berlangsung sejak lama.

Pemerintah Indonesia, dalam beberapa tahun terakhir mulai mengembangkan ekonomi kreatif di Indonesia. Pengembangan ekonomi kreatif di Indonesia bertujuan untuk meningkatkan pertumbuhan ekonomi dan pembangunan. Batik sebagai produk budaya, berada di tengah pengembangan ekonomi kreatif. Batik juga memiliki peran yang besar dalam ekonomi kreatif. Sebagai industri, batik membutuhkan tenaga kerja dalam jumlah yang banyak, sehingga dapat meningkatkan perekonomian negara karena dapat membuka lapangan kerja bagi masyarakat. Proses pembuatan batik yang unik pun dapat menarik wisatawan asing untuk mengunjungi Indonesia dan mempelajari seni batik. Selanjutnya, melalui museum batik yang tersebar di berbagai wilayah Indonesia, para wisatawan pun dapat menikmati keindahan batik dari masa ke masa. Hal ini dapat memberi dampak yang baik bagi sektor pariwisata Indonesia dan meningkatkan devisa negara. Sebagai sebuah karya seni, nilai estetika batik terletak pada keindahan motif dan material. Sehingga batik memiliki potensi besar dalam industri mode atau *fashion*.

Selain di Indonesia, batik juga ditemukan di beberapa negara Asia seperti Malaysia, Cina, Thailand, serta beberapa negara di Afrika. Selain itu, Indonesia bukanlah satu-satunya negara yang mengembangkan ekonomi kreatif. Sehingga berbagai upaya untuk menonjolkan keunikan batik dalam dunia internasional tidak hanya dilakukan oleh Indonesia. Promosi Malaysia terhadap batik menimbulkan reaksi yang kuat dari masyarakat Indonesia. Reaksi masyarakat Indonesia tersebut terutama ditujukan terhadap promosi Malaysia atas batik sebagai kebudayaan Malaysia. Walaupun batik tersebut dihasilkan oleh pembatik Indonesia.[44] Pengakuan

[43] Biranul Anas Zaman, "Batik-Kreativitas-Ekonomi Menanggapi Peran Batik dalam Ekonomi Kreatif," (makalah disampaikan pada *World Batik Summit 2011, Indonesia: Global Home of Batik*, Jakarta 28 September 2011), hal. 82.

[44] Hasil wawancara dengan Bapak Hamim, pengajar batik pada Museum Tekstil, Jakarta. Wawancara dilakukan pada 11 Februari 2010.

batik oleh negara lain dipandang dapat menimbulkan kerugian bagi Indonesia, terutama bagi masyarakat budaya, berupa hilangnya manfaat ekonomi dan hak moral milik bangsa Indonesia. Promosi oleh Malaysia tersebut membangkitkan kembali perhatian masyarakat Indonesia terhadap batik.

Meningkatnya minat terhadap batik berarti bertambahnya jumlah permintaan akan batik. Namun, proses pembuatan batik merupakan prosedur yang membutuhkan suatu keahlian khusus dan memakan waktu yang lama. Hal ini menyebabkan, meningkatnya harga produksi batik. Meningkatnya harga produksi ini juga disebabkan oleh semakin berkurangnya jumlah pekerja yang memiliki keahlian untuk membatik.[45] Para pengusaha yang menginginkan laba yang besar banyak yang beralih kepada pembuatan imitasi batik berupa kain bermotif batik. Pembuatan kain bermotif batik dilakukan dengan mencetak motif-motif batik dengan menggunakan mesin pencetak atau pencetak manual. Dalam perkembangannya, tekstil bermotif batik ini tidak hanya diproduksi oleh masyarakat Indonesia, tetapi juga oleh pihak asing. Karena proses pembuatannya yang tidak menggunakan teknik merintang warna, maka kain bermotif batik tersebut bukanlah sebuah batik. Namun, kain bermotif batik dipasarkan sebagai batik. Pemasaran kain bermotif batik sebagai sebuah batik ini, dalam kelanjutannya menimbulkan kerugian yang sangat besar terhadap batik maupun masyarakat. Kerugian tersebut disebabkan karena harga kain bermotif batik yang relatif lebih rendah dibandingkan dengan harga batik secara berangsur dapat mematikan produksi batik. Jika batik tidak lagi diproduksi oleh masyarakat Indonesia, maka seni batik sebagai budaya dapat hilang.

Melihat nilai batik sebagai warisan budaya dan potensi ekonomi yang dimiliki batik, maka perlindungan hukum pun penting untuk diberikan. Perlindungan hukum tersebut dibutuhkan baik pada tingkat internasional maupun secara nasional. Dalam ruang lingkup internasional, perlindungan terhadap budaya dilakukan secara aktif oleh dua organisasi Perserikatan Bangsa-Bangsa (PBB) yaitu UNESCO dan *World Intellectual Property Organization* (WIPO). Perlindungan hukum terhadap budaya yang dilakukan oleh UNESCO lebih diutamakan pada perlindungan dan pelestarian

[45] Iwan Tirta (B), *op.cit.* hal. 4.

budaya. Perlindungan terhadap budaya yang dilakukan oleh UNESCO difokuskan pada upaya untuk menjaga keberlangsungan budaya dalam menghadapi era globalisasi. WIPO di lain pihak memberikan perlindungan terhadap budaya melalui pendekatan kekayaan intelektual, yaitu hak hukum yang diperoleh dari kegiatan intelektual di bidang industri, ilmiah, sastra, dan seni.[46] Peran WIPO dalam perlindungan bagi budaya dilatarbelakangi adanya nilai ekonomis dari budaya melalu industrialisasi budaya.

Mekanisme awal bagi perlindungan terhadap budaya melalui hak kekayaan intelektual dimulai sejak tahun 1967 saat dilakukannya amandemen terhadap Konvensi Bern.[47] Pada tahun 1982, WIPO bersama dengan UNESCO membentuk hukum kekayaan intelektual dengan tipe *sui generis* melalui UNESCO-WIPO *Model Provisions.*[48] Model provisions ini merujuk budaya dengan menggunakan istilah *folklore*. Dalam Model Provisions ini juga dibahas tentang kemungkinan penggunaan hak cipta untuk melindungi warisan budaya sebagai produk kreativitas bangsa. Perlindungan terhadap warisan budaya selanjutnya dilakukan oleh WIPO dan UNESCO secara terpisah. WIPO mengadopsi istilah *Pengetahuan Tradisional (Traditional Knowledge)* dan *Ekspresi Budaya Tradisional (Traditional Cultural Expressions)* karena istilah folklore dipandang memiliki nuansa kolonialisme yang kuat. WIPO selanjutnya membentuk *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (IGC) yang bertugas untuk meningkatkan perlindungan terhadap pengetahuan tradisional dan ekspresi budaya tradisional dari tindakan penyalahgunaan. Perlindungan terhadap

[46] *World Intellectual Property Organization(WIPO) (A), WIPO Intellectual Property Handbook: Policy, Law, and Use,* Ed.2, (Jenewa: *World Intellectual Property Organization*, 2004), hal. 3.

[47] Konvensi Bern atau *Convention for the Protection of Literary and Artistic Works* adalah perjanjian internasional yang mengatur tentang harmonisasi hak cipta di dunia internasional. Penjelasan tentang Konvensi Bern akan dibahas di Bab 3.

[48] UNESCO-WIPO *Model Provisions* merupakan suatu panduan bagi hukum nasional negara anggota UNESCO dan WIPO untuk memberi perlindungan hukum bagi budaya.
UNESCO-WIPO *Model Provisions* ini dapat diakses melalui http://www.wipo.int/export/sites/www/tk/en/laws/pdf/unesco_wipo_1982.pdf , diunduh 22 Februari 2010.

warisan budaya dari segi kekayaan intelektual juga dilakukan melalui ruang lingkup *World Trade Organization* (WTO) melalui *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs) karena masuknya warisan budaya ke dalam ranah perdagangan internasional melalui ekonomi kreatif. Perlindungan melalui TRIPs tidak dinyatakan secara eksplisit di dalam badan perjanjian, tetapi dilakukan dengan merujuk pada peraturan dalam *Berne Convention for the Protection of Literary and Artistic Works* (Konvensi Bern).[49]

Perlindungan warisan budaya mengalami perluasan cakupan pemahaman melalui instrumen hukum yang dikembangkan oleh UNESCO. Konsep warisan budaya yang pada tahap awal hanya mencakup situs atau monumen serta artefak berkembang hingga mencakup tradisi hingga ekspresi budaya yang hidup di dalam masyarakat.[50] UNESCO menggunakan istilah *Ekspresi Budaya Tak Berwujud (Intangible Cultural Heritage)* untuk merujuk kepada warisan budaya yang merupakan tradisi dan ekspresi budaya dalam masyarakat. Perlindungan terhadap warisan budaya tak berwujud dilakukan UNESCO melalui *the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage* (ICHC).[51] Perlindungan terhadap warisan budaya yang ditekankan dalam ICHC adalah perlindungan terhadap pengetahuan dan keterampilan yang diwariskan dari satu generasi ke generasi berikutnya. ICHC turut memberi pengakuan atas nilai ekonomi yang terdapat dalam warisan budaya tak berwujud dan perannya bagi perekonomian negara. Salah satu bentuk perlindungan terhadap warisan budaya melalui ICHC diwujudkan melalui *Daftar Representatif Warisan Budaya Tak Berwujud.*

[49] Penjelasan lebih lanjut tentang Konvensi Bern dan TRIPs akan dipaparkan pada Bab III.

[50] "UNESCO (B), "*What Is Intangible Cultural Heritage?*"," http://www.unesco.org/culture/ich/doc/src/01851-EN.pdf , diunduh 5 Mei 2010.

[51] *The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage* merupakan konvensi yang dikeluarkan oleh UNESCO untuk memberi perlindungan terhadap warisan budaya tak berwujud.

The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage dapat diakses melalui http://unesdoc.unesco.org/images/0013/001325/132540e.pdf , diunduh 22 Februari 2010.

Warisan budaya tak berwujud berdasarkan ICHC merupakan suatu dorongan utama bagi keragaman budaya yang menjadi dasar bagi pembangunan negara. Perlindungan tersebut memberi jalan bagi perlindungan warisan budaya melalui *the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression* (Konvensi UNESCO 2005).[52] Perlindungan warisan budaya melalui Konvensi UNESCO 2005 ini memiliki kesinambungan dengan perlindungan melalui kekayaan intelektual yang dijalankan oleh WIPO. Hal ini disebabkan, Konvensi UNESCO 2005 memberi pengakuan atas dua nilai budaya yaitu nilai ekonomi dan nilai kultural dan pentingnya peran kekayaan intelektual dalam menjaga aspek kreatif budaya tersebut.

Dalam ranah hukum nasional, terdapat suatu kesinambungan perlindungan batik sebagai budaya dengan perlindungan dalam ranah hukum internasional. Indonesia telah melakukan kerjasama dengan WIPO melalui *The Permanent Mission of Indonesia* dalam PBB dan Organisasi Internasional lainnya untuk melindungi kebudayaan tradisional Indonesia dari sisi kekayaan intelektual. Undang-Undang Nomor 19 Tahun 2002 tentang Hak Cipta (UUHC) memberi perlindungan terhadap batik sebagai karya cipta yang dilindungi oleh negara. UUHC memberi perlindungan terhadap batik sebagai warisan budaya yang tidak diketahui penciptanya. Perlindungan terhadap batik harus memperhatikan beberapa sudut pandang, antara lain batik sebagai bagian dari ekonomi kreatif, batik sebagai warisan budaya, dan batik sebagai kekayaan intelektual. Dengan semakin maraknya imitasi atas batik maka aspek perlindungan konsumen dan petunjuk otentisitas batik harus dijadikan sebagai pertimbangan. Oleh karena itu, dengan mengacu pada UUHC, Undang-Undang Nomor 5 Tahun 1984 tentang perindustrian, Undang-Undang Nomor 5 Tahun 1992 tentang Benda Cagar Budaya, Undang-Undang Nomor 8 Tahun 1999

[52] *The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression* merupakan konvensi yang dikeluarkan oleh UNESCO untuk memberi perlindungan terhadahap ekspresi budaya.

The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression dapat diakses melalui http://unesdoc.unesco.org/images/0014/001429/142919e.pdf , diunduh 22 Februari 2010.

tentang Perlindungan Konsumen, dan Peraturan Menteri Perindustrian Republik Indonesia Nomor 19/M-IND/PER/5/2006 tentang Standarisasi maka Kementerian Perindustrian Republik Indonesia mengeluarkan Peraturan Menteri Perindustrian Republik Indonesia dengan Nomor 74/M-IND/PER/9/2007 tentang BATIKMARK.[53] Batikmark ini bukanlah suatu perlindungan berupa merek melainkan peraturan berupa *labeling* untuk memberi tanda otentisitas berupa standarisasi. Selanjutnya, perlindungan batik dapat dilakukan melalui kekayaan intelektual yang bersifat *origin-related* berupa indikasi geografis. Perlindungan tentang indikasi geografis di Indonesia dilindungi melalui Undang-Undang Nomor 15 Tahun 2001 tentang Merek dan Peraturan Pemerintah Nomor 51 Tahun 2007 tentang Indikasi Geografis.

Batik sebagai warisan budaya Indonesia, memperoleh pengakuan dari dunia internasional dengan dimasukkannya batik ke dalam Daftar Representatif Warisan Budaya Tak Berwujud oleh UNESCO pada tanggal 2 Oktober 2009. Mengikuti pengakuan tersebut oleh UNESCO dan pengakuan batik oleh Malaysia sebelumnya membangkitkan kembali perhatian masyarakat Indonesia terhadap batik. Namun, terdapat kesan euforia dari berbagai kalangan baik pemerintah maupun masyarakat pada umumnya atas pengakuan UNESCO tersebut. Bahwa dengan diakuinya batik sebagai milik Indonesia oleh UNESCO masyarakat melihat bahwa batik telah memperoleh suatu posisi aman dari pencurian budaya. Tanggapan euforia masyarakat Indonesia akan pengakuan batik oleh UNESCO dan dampak nyata atas pengakuan batik oleh UNESCO tersebut yang kemudian melatarbelakangi ditulisnya skripsi dengan judul *Pentingnya Perlindungan Hukum Batik Jawa dalam Ekonomi Kreatif Ditinjau dari Hukum Perdata Internasional* ini.

[53] Peraturan Menteri Perindustrian No 74/M-IND/PER/9/2007 merupakan peraturan hukum untuk memberi perlindungan terhadap batik produksi Indonesia melalui Batikmark yaitu suatu sertifikasi merek yang mensertifikasi batik hasil produksi Indonesia.
Peraturan Menteri Perindustrian ini dapat diakses melalui http://dokpus.depperin.go.id/detail_peraturan.php?id=112 , diunduh 22 Februari 2010.

B. Pokok-Pokok Permasalahan

Dalam skripsi ini yang akan menjadi pokok permasalahan adalah:

1. Apakah instrumen hukum internasional dan nasional yang mengatur mengenai ekspresi budaya tradisional dan hak kekayaan intelektual telah secara efektif memberi perlindungan bagi batik sebagai warisan budaya dan komoditas perdagangan dalam dunia internasional?
2. Apakah dampak instrumen WTO-WIPO-UNESCO dan instrumen hukum nasional bagi perlindungan batik sebagai suatu ekspresi budaya tradisional dan warisan budaya dalam ekonomi kreatif?

C. Tujuan Penelitian

Tujuan penelitian adalah sasaran yang hendak dicapai dalam melakukan penelitian. Berdasarkan permasalahan yang telah dijelaskan, penulisan skripsi ini bertujuan untuk:

1. Mengetahui keefektifan instrumen hukum internasional dan nasional yang mengatur mengenai ekspresi budaya tradisional dan kekayaan intelektual dalam memberi perlindungan terhadap batik di dunia internasional.
2. Mengetahui dampak instrumen WTO-WIPO-UNESCO dan instrumen hukum nasional bagi perlindungan batik dalam ekonomi kreatif.

D. Kerangka Konsepsional

Berikut ini adalah pengertian-pengertian dari istilah-istilah yang terdapat dalam skripsi ini:

1. Hukum adalah:

   "Undang-undang, peraturan untuk mengatur pergaulan hidup masyarakat".[54]

[54] Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, ed. 4, (Jakarta: PT Gramedia, 2008), hal. 510.

2. Hukum Internasional adalah:

   "Keseluruhan kaidah dan asas yang mengatur hubungan atau persoalan yang melintasi batas negara antara (i) negara dengan negara dan (ii) negara dengan subjek hukum lain bukan negara atau subjek hukum bukan negara satu sama lain".[55]

3. Hukum Perdata Internasional adalah:

   "Keseluruhan peraturan dan keputusan hukum yang menunjukkan stelsel hukum manakah yang berlaku atau apakah yang merupakan hukum, jika hubungan-hubungan dan peristiwa-peristiwa antara warga negara pada satu waktu tertentu memperlihatkan titik-titik pertalian dengan stelsel-stelsel dan kaidah-kaidah hukum dari dua atau lebih negara yang berbeda dalam lingkungan-lingkungan kuasa tempat (pribadi) dan soal-soal."[56]

4. Hak Kekayaan Intelektual adalah:

   "Kreasi yang dihasilkan dari pikiran manusia yang meliputi invensi, karya sastra dan seni, simbol, nama, citra, dan desain yang digunakan dalam perdagangan."[57]

5. Hak Cipta adalah:

   "Hak eksklusif bagi Pencipta atau penerima hak untuk mengumumkan atau memperbanyak ciptaannya atau memberikan izin untuk itu dengan tidak mengurangi pembatasan-pembatasan menurut peraturan perundang-undangan yang berlaku."[58]

[55] Mochtar Kusumaatmadja dan Etty R. Agoes. *Pengantar Hukum Internasional*. Ed.2. cet.1 (Bandung:PT Alumni, 2003),hal.4.

[56] Sudargo Gautama (A), *Pengantar Hukum Perdata Internasional Indonesia*, (Bandung : Binacipta, 1987) , hal. 21.

[57] "What is Intellectual Property" , http://www.wipo.int/about-ip/en/, diunduh 17 Februari 2010.

[58] Indonesia, *Undang-Undang Hak Cipta*, UU No. 19 tahun 2002, LN No.85, TLN.No. 4220, Ps 1 ayat 1.

6. Batikmark adalah:

   "Suatu tanda yang menunjukkan identitas dan ciri batik buatan Indonesia yang terdiri dari tiga jenis yaitu batik tulis, batik cap, dan batik kombinasi tulis dan cap".[59]

7. Indikasi Geografis adalah:

   "Suatu tanda yang menunjukkan daerah asal suatu barang, yang karena faktor lingkungan geografis termasuk faktor alam, faktor manusia, atau kombinasi dari kedua faktor tersebut, memberikan ciri dan kualitas tertentu pada barang yang dihasilkan".[60]

8. Ekspresi Budaya Tradisional adalah:

   "Bagian integral dari kebudayaan dan identitas sosial masyarakat yang meliputi musik, kesenian, pola, nama, lambang dan simbol, pertunjukan, bentuk arsitektur, kerajinan tangan, dan narasi".[61]

9. Ekonomi Kreatif adalah:

   "Ekonomi kreatif adalah konsep yang mengalami perkembangan yang konstan berdasarkan aset kreatif yang memiliki potensi bagi peningkatan ekonomi dan pembangunan".[62]

E. Metode Penelitian

Metodologi penelitian adalah *the process, principles and procedures by which we approach problems and seek answers. In the social sciences the term applies to*

[59] Departemen Perindustrian, *Peraturan Menteri Perindustrian Republik Indonesia Tentang Penggunaan BATIKMARK "batik Indonesia" Pada Batik Buatan Indonesia*, Permen Perindustrian No. 74, Tahun 2007, ps. 1. ayat 2.

[60] Indonesia, *Peraturan Pemerintah Republik Indonesia Tentang Indikasi-Geografis*, PP No.51 Tahun 2007, LN No.115 Tahun 2007, TLN 4763, ps. 1 angka 1.

[61] "Traditional Cultural Expressions (Folklore)", http://www.wipo.int/tk/en/folklore/, diunduh 17 Februari 2010.

[62] *United Nations* (A), *Creative Economy Report 2010, Creative Economy: A Feasible Development Option*, (Jenewa: United Nations, 2010), hal. 10.

how one conducts research.[63] Penelitian mengenai perlindungan batik Jawa dalam ekonomi kreatif ini menggunakan metode penelitian kepustakaan yaitu penelitian yang menekankan pada penggunaan data sekunder atau berupa norma hukum tertulis dan atau wawancara dengan informan serta narasumber. Wawancara dilakukan dengan para pakar batik seperti Ibu Neneng Iskandar, Ibu Oedharjo Diran, K.R.A Hardjosoewarno, dan Ibu Suliantoro. Wawancara juga dilakukan dengan para pengajar dari Fakultas Seni Rupa dan Desain Institut Teknologi Bandung antara lain Dr. Kahfiati Kahdar, MA, Dr. Ratna Panggabean, M.Sn, Drs Achmad Haldani D, M.Sn, serta dengan ahli Hak Kekayaan Intelektual Institut Teknologi Bandung Ir. Ahdiar Romadoni, MBA. Lebih lanjut wawancara dan diskusi dilakukan dengan para pelaku usaha batik dan bidang terkait di antaranya dengan Bapak Y.W Junardy Presiden Komisaris PT Rajawali Corporation, Ibu Nancy Margried CEO dan Co-Founder Piksel Indonesia, serta Ibu Anita Asmaya Sanin *Production Director* Alleira Batik. Proses wawancara selanjutnya dilakukan dengan pihak pemerintah antara lain Bapak Ahmad Mahendra dari Kementerian Kebudayaan dan Pariwisata,[64] Bapak Agus Priyono, Bapak Arif Wibisono, dan Ibu Hikmah Fitria dari Kementerian Perdagangan, Bapak Wahyu Jati Pramanto dari Direktorat Jenderal Hak Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia, dan Bapak Sarwono dari Kementerian Luar Negeri. Lebih lanjut, proses wawancara juga dilakukan dengan Bapak Masanori Nagaoka UNESCO *Culture Programme Specialist*.

Data yang digunakan dalam melakukan penelitian ini adalah data sekunder yaitu data yang diperoleh langsung melalui penelusuran kepustakaan atau dokumentasi. Data sekunder yang digunakan berupa bahan hukum primer dan bahan hukum sekunder serta bahan pustaka terkait. Bahan hukum primer adalah bahan-bahan hukum yang mengikat dan terdiri dari norma dasar, peraturan dasar, peraturan perundang-undangan, hukum adat, yurisprudensi dan traktat. Bahan hukum primer dalam penelitian ini berupa peraturan perundang-undangan seperti Undang-Undang

[63]Soerjono Soekanto, *Pengantar Penelitian Hukum,* (Jakarta : UI-Press, 2008), hal. 6.

[64]Kementerian Kebudayaan dan Pariwisata mengalami perubahan nama menjadi Kementerian Pariwisata dan Ekonomi Kreatif.

Nomor 19 Tahun 2002 tentang Hak Cipta, Undang-Undang Nomor 15 Tahun 2001 tentang Merek, Peraturan Pemerintah Nomor 51 Tahun 2007 tentang Indikasi Geografis, dan Peraturan Menteri Perindustrian Nomor 74/M-IND/PER/9/2007 tentang Batikmark. Bahan hukum primer yang digunakan dalam penelitian ini juga berupa perjanjian internasional yaitu *Paris Convention for the Protection of Industrial Property*, *Berne Convention for the Protection of Literary and Artistic Works*, *Agreement on Trade-Related Aspects of Intellectual Property Rights*, *the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*, dan *the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression*. Selanjutnya, bahan hukum sekunder adalah bahan yang memberikan penjelasan mengenai bahan hukum primer. Bahan hukum sekunder yang digunakan dalam penelitian ini adalah literatur terkait antara lain *Batik A Play of Lights and Shades* karangan Iwan Tirta, Batik Sebuah Lakon karangan Iwan Tirta, *Batik: Fabled Cloth of Java* karangan Inger McCabe Elliott, *Indonesian Textiles* karangan Michael Hitchcock, Pengantar Hukum Perdata Internasional Indonesia karangan Sudargo Gautama, dan *Intellectual Copyright: Principles, Law, and Practice* karangan Paul Goldstein. Bahan hukum sekunder yang digunakan juga berupa hasil-hasil penelitian dan hasil karya dari kalangan hukum yang relevan seperti Kebudayaan Tradisional: Suatu Langkah Maju untuk Perlindungan di Indonesia karya Peter Jaszi dan tim peneliti, serta artikel-artikel dari internet. Bentuk penelitian yang digunakan dalam penelitian ini adalah bentuk penelitian kepustakaan-normatif. Penelitian yang dilakukan untuk meneliti perlindungan batik Jawa dalam perdagangan internasional dan ekonomi kreatif Indonesia menggunakan tipe penelitian deskriptif di mana hanya diberikan gambaran umum atas pokok permasalahan dan evaluatif dengan menggunakan alat pengumpulan data berupa studi dokumen.

F. Sistematika Penulisan

Penelitian hukum ini dibagi atas 4 (empat) bab yang menjelaskan dan menggambarkan suatu permasalahan secara terpisah yang merupakan suatu kesatuan. Adapun sistematika penulisan penelitian ini adalah sebagai berikut:

BAB I PENDAHULUAN

Dalam bab pendahuluan, penulis akan menjelaskan latar belakang penulisan judul, pokok permasalahan, tujuan penelitian, kegunaan penelitian, kerangka konsepsional, metodologi penelitian, dan sistematika penulisan hukum.

BAB II BATIK JAWA SEBAGAI EKSPRESI BUDAYA TRADISIONAL DAN HAK KEKAYAAN INTELEKTUAL

Dalam bab ini, penulis akan menguraikan mengenai tinjauan umum akan batik seperti pengertian batik, perkembangan akan karya seni batik , dan jenis-jenis dari batik Jawa. Selain itu dalam bab ini penulis juga akan menguraikan mengenai konsep ekspresi budaya tradisional dan hak kekayaan intelektual serta batik sebagai ekonomi kreatif.

BAB III PENGATURAN BATIK DALAM HUKUM INTERNASIONAL DAN HUKUM NASIONAL

Dalam bab ini, penulis akan membahas secara rinci akan peran hukum perdata internasional dan instrumen-instrumen hukum yang berperan dalam perlindungan batik khususnya batik Jawa sebagai suatu ekspresi budaya dasar terkait dengan hak kekayaan intelektual yang terdapat pada batik.

BAB IV PENUTUP

Dalam bab ini, penulis akan merumuskan kesimpulan dari semua permasalahan yang telah diteliti dan memberi saran yang diperlukan.

BAB II

BATIK JAWA SEBAGAI EKSPRESI BUDAYA TRADISIONAL DAN HAK KEKAYAAN INTELEKTUAL

A. Tinjauan Umum Batik

1. Pendahuluan

Batik merupakan suatu bagian penting dalam kehidupan masyarakat Indonesia. Batik merupakan suatu ungkapan ekspresi budaya di mana batik diciptakan, sehingga batik identik dengan masyarakat tertentu. Batik adalah suatu kain dengan corak dan ragam hias yang membentuk suatu kesatuan. Dalam sehelai kain batik terdapat ungkapan filosofi kehidupan masyarakat suatu daerah, sehingga setiap helai batik memiliki sebuah makna yang mendalam bagi masyarakat tersebut. Batik dapat ditemukan di berbagai wilayah di Indonesia. Batik yang dihasilkan di Indonesia sebagian besar terpusat di Pulau Jawa. Batik yang dihasilkan di luar Pulau Jawa umumnya berasal dari Pulau Jawa dan disebarkan melalui perdagangan. Salah satu sentra batik Indonesia di luar Pulau Jawa adalah Jambi. *Batik Jambi* pada mulanya merupakan batik yang dihasilkan di Pulau Jawa dengan ragam hias yang disesuaikan dengan selera masyarakat Jambi.[61] Selain Jambi, sejak tahun 1970-an industri batik mulai berkembang di Bali.[62] *Batik Bali* umumnya dipakai oleh masyarakat Bali dalam upacara adat dan keagamaan.

Batik di mata dunia internasional dilihat sebagai suatu kain yang memiliki nilai keindahan yang tinggi.[63] Batik juga dilihat sebagai perwujudan nyata dari keterampilan budaya dan pengetahuan yang sudah berkembang selama berabad-abad

[61] Hasil wawancara dengan Neneng Iskandar, pakar batik dan penulis buku *Batik Indonesia dan Sang Empu*. Wawancara dilakukan pada tanggal 15 Maret 2010. Wawancara dilakukan di Galeri Srihana.

[62] "Batik Bali, Perkawinan Motif 'Dalam' dan 'Luar'," http://belajarbatik.com/article/29206/batik-bali-perkawinan-motif-dalam-dan-luar.html, diakses 31 Maret 2010.

[63] Wronska-Friend, *loc. cit.*

lamanya.[64] Makna pada sehelai batik Jawa tertuang pada ragam hias batik, baik berupa simbol maupun ekspresi bebas masyarakat. Melalui sehelai batik diungkapkan kepercayaan dan etika hidup masyarakat Jawa. Hingga saat ini masih terdapat beragam pandangan akan asal mula kata batik dan pengertian batik. Untuk memahami makna batik terlebih dahulu perlu dipahami makna batik dari (i) pemahaman etimologis batik, (ii) pemahaman secara teknis batik, dan (iii) pemahaman dari ragam hias batik.

a. Pengertian Batik Secara Etimologis

Secara *etimologis*, kata batik berasal dari bahasa Jawa. Namun, terdapat beragam pendapat akan akar kata batik. Ada pendapat yang menyatakan kata batik berasal kata *tik*, yang berarti "berhubungan dengan suatu pekerjaan halus, lembut, dan kecil yang mengandung unsur keindahan".[65] Namun, ada pendapat yang menyatakan bahwa kata batik berakar dari kata *titi* yang berarti "dengan teliti atau cermat".[66] Pendapat lain mengatakan asal kata batik adalah kata *titik* yang berarti "diberi tanda titik".[67] Selain *tik* dan *titik* terdapat juga pendapat yang menyusuri asal kata batik dari kata *amba* yang artinya "menulis". Ada juga yang menarik asal kata batik dari kata *mbatik*, yaitu perkembangan kata *amba*, yang bermakna "melemparkan titik berkali-kali pada kain".[68] Rens Heringa, seorang pengamat batik, menelusuri kata batik pada kata *thika* yang memiliki arti "menulis, menggambar, melukis, dan sesuatu yang berhubungan dengan aktivitas tersebut".[69] Dengan beragamnya pendapat tentang akar kata batik, secara etimologis batik dapat diartikan sebagai suatu proses menitikkan

[64] *Ibid.*

[65] Yayasan Harapan Kita, *op.cit.*, hal. 14.

[66] Iwan Tirta (C), *Batik: Sebuah Lakon*, (Jakarta: Gaya Favorit Press, 2009), hal. 17.

[67] *Ibid.*

[68] Tim Sanggar Batik Barcode, *Batik: Mengenal Batik dan Cara Mudah Membuat Batik*, (Jakarta: Tim Sanggar Batik Barcode, 2010), hal. 3.

[69] Rens Heringa dan Harmen C. Veldhuisen, *Fabric of Enchantment: Batik from The North Coast of Java*,(Los Angeles: Los Angeles County Museum of Art, 1996), hal. 32.

malam dengan menggunakan alat, sehingga menciptakan suatu corak yang terdiri dari susunan titik dan garis. Selanjutnya, Kamus Besar Bahasa Indonesia mendefinisikan batik sebagai "kain bergambar yang dibuat secara khusus dengan cara menuliskan malam pada kain dan pengolahannya diproses dengan cara tertentu".

b. Pengertian Batik Secara Teknis

Secara *teknis* batik adalah suatu cara penerapan corak di atas kain melalui proses pencelupan rintang warna dengan malam sebagai medium perintangnya. Secara teknis proses membatik dilakukan dengan mengalirkan cairan malam pada selembar kain antara lain dengan (i) menggunakan canting, (ii) menggunakan alat cetak dari perunggu atau canting cap, serta (iii) kombinasi penggunaan canting dan cap. Proses merintang warna merupakan esensi dari sebuah batik. Hal ini untuk membedakan dengan kain bermotif batik yang diproduksi secara massal dengan mencetak motif batik pada sebuah kain, atau yang dikenal dengan batik print. Batik print tidak dapat disebut sebagai batik, tapi kain dengan motif batik. Iwan Tirta mendefinisikan batik sebagai suatu teknik menghias permukaan tekstil dengan menahan pewarna.[70] Untuk memberi keseragaman pengertian batik, pada tahun 1997 di Yogyakarta diselenggarakan suatu Konvensi Batik Internasional yang memberi definisi batik sebagai "suatu proses penulisan gambar atau ragam hias pada media apa pun dengan menggunakan lilin sebagai alat perintang warna".

c. Pengertian Batik Sebagai Ragam Hias (Motif)

Menurut Achmad Haldani terdapat dua unsur dalam batik, yaitu secara visual dan teknik. Oleh karena itu batik tidak hanya merupakan suatu teknik pembuatan kain dengan menggunakan malam tetapi juga merupakan suatu ragam hias.[71] Nancy Margried menegaskan pendapat Achmad Haldani dengan menyatakan bahwa terdapat

[70] Iwan Tirta (C), *op. cit.*

[71] Hasil wawancara dengan Achmad Haldani, Pengajar pada Kelompok/Keilmuan Kria dan Tradisi Fakultas Seni Rupa dan Desain Institut Teknologi Bandung. Wawancara dilakukan pada 2 Maret 2010. Wawancara dilakukan di kampus Fakultas Seni Rupa dan Desain Institut Teknologi Bandung.

dua pengertian batik yaitu pengertian batik secara teknik pembuatan dan pengertian batik secara motif.[72] Pengertian batik secara motif artinya bahwa sudah terdapat suatu *mental picture* akan motif batik yang khas dalam masyarakat luas. Sehingga, masyarakat memahami batik melalui motif yang terdapat pada sebuah batik. Faktor yang menandakan bahwa sebuah batik merupakan batik Jawa adalah ragam hias dari sebuah batik. Ekspresi budaya masyarakat Jawa tertuang dalam ragam hias yang terdapat pada sebuah batik. Ekspresi budaya tersebut baik berupa filosofi masyarakat Jawa ataupun ekspresi bebas masyarakat Jawa. Melalui ragam hias yang terdapat dalam batik Jawa, maka batik merupakan suatu sarana untuk menunjukkan status sosial masyarakat Jawa, doa dan harapan masyarakat Jawa.

2. Tinjauan Umum Batik Indonesia

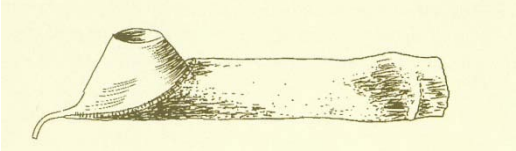
Batik Indonesia, khususnya batik Jawa memiliki beberapa kekhasan yang menjadi ciri pembeda batik Indonesia dengan batik yang dihasilkan oleh negara lain. Ciri khas yang dimiliki oleh batik Indonesia, di antaranya berupa (i) pembuatannya yang dilakukan dengan menggunakan canting, (ii) pewarna alam yang digunakan, dan (iii) motif isen-isen yang digunakan sebagai penghias latar batik. Penggunaan canting menjadi faktor yang memberi ciri khas terhadap batik Indonesia karena canting pertama kali diciptakan di Jawa. Canting untuk membatik terdiri dari dua jenis canting, yaitu canting tulis dan canting cap. Canting tulis merupakan alat berupa bejana kuningan atau tembaga yang dilengkapi dengan paruh untuk mengalirkan malam pada permukaan kain. Sulit untuk diketahui secara pasti kapan canting tulis pertama kali dibuat.[73] Canting tulis pun memiliki ragam dalam bentuknya. Ukuran besar atau kecil paruh canting tulis maupun jumlah paruh pada canting tulis disesuaikan dengan besar atau kecilnya motif yang akan digambar pada sebuah kain.

[72] Hasil wawancara dengan Nancy Margried. CEO dan Co-Founder Piksel Indonesia, Batik Fractal Indonesia. Piksel Indonesia merupakan perusahaan yang mengembangkan batik fractal sebagai inovasi baru dalam pembuatan batik yaitu melalui piranti lunak. Wawancara dilakukan pada 7 April 2010 di Bandung.

[73] Tirta (C), *op. cit.*, hal. 19.

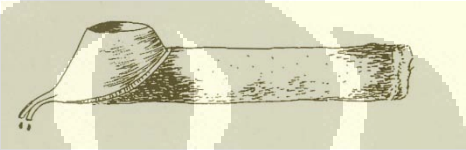
Umumnya seorang perajin batik menggunakan empat hingga lima canting yang berbeda untuk menghasilkan satu helai batik.[74]

Gambar 1



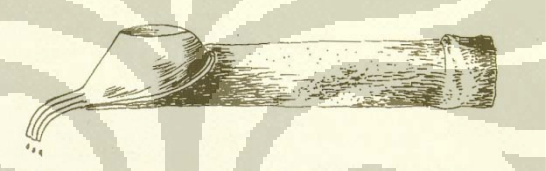
Canting Tulis dengan 1 paruh

Gambar 2



Canting Tulis dengan 2 paruh

Gambar 3



Canting Tulis dengan 3 paruh

Gambar 4[75]

Sumber: Iwan Tirta, *Batik: Sebuah Lakon*

Dalam pembuatan batik dengan menggunakan canting tulis, paruh dari canting tidak dapat menyentuh kain yang dilapisi malam, dan untuk menghindari luapan malam, maka canting harus digenggam secara horizontal.[76] Pembuatan batik dengan menggunakan canting tulis membutuhkan suatu ketelitian, ketekunan, dan kesabaran, karena itu canting tulis umumnya digunakan oleh perajin wanita. Batik

[74] Tim Sanggar Batik Barcode, *op. cit.*, hal. 104.

[75] Tirta (C), *op.cit.*, hal. 18.

[76] Hitchcock (A), *op.cit.*, hal. 89.

yang dihasilkan melalui proses membatik dengan menggunakan canting tulis adalah batik tulis.

Pada abad ke-19 dengan maraknya produksi massal batik para perajin batik mulai menggunakan canting cap, yang memungkinkan pembuatan batik dalam waktu yang lebih singkat bila dibandingkan dengan batik tulis. Canting cap merupakan suatu tembaga berupa ukiran yang membentuk suatu motif batik. Sama halnya dengan canting tulis, canting cap berfungsi memindahkan cairan malam panas pada sehelai kain. Proses membatik dengan menggunakan canting cap umumnya dilakukan oleh laki-laki, karena proses membatik ini membutuhkan tenaga yang lebih besar. Dalam proses pembuatan batik dengan menggunakan canting cap, motif yang dituangkan pada kain adalah suatu pengulangan motif.

Gambar 5[77]

Canting Cap

Persamaan antara batik tulis dengan batik cap adalah motif yang digambar pada sehelai kain digambar pada kedua sisi kain tersebut. Batik tulis dan batik cap memiliki beberapa perbedaan antara lain:[78]

Tabel 1

Perbedaan Batik Cap dan Batik Tulis

No	Unsur Pembeda	Batik Cap	Batik Tulis
1.	Kain Mori yang digunakan sebagai bahan dasar	Berkualitas lebih rendah	Berkualitas tinggi
2.	Titik bekas tanda batas	Ada	Tidak ada

[77] Tirta (C), *op. cit.*, hal. 21.

[78] Diolah dari Yussac, "Seni Batik", (Tesis untuk Magister Seni Kria pada Fakultas Seni Rupa dan Desain Institut Teknologi Bandung, Bandung, 1969), hal. 7-8.

3.	Titik bekas proses penitis (pemalaman sisi kedua kain)	Ada	Tidak ada
4.	Ketajaman garis pada motif	Tajam akibat tekanan saat proses pengecapan	Tidak tajam, tetapi lebih halus
5.	Kesimetrisan garis	Simetris	Tidak simetris
6.	Titik pada motif	Tidak terlalu kecil, lebih teratur, rapi, dan letaknya sangat rapat	Kecil, tidak teratur, dan tidak rapat
7.	Motif sejenis yang dihasilkan	Memiliki persamaan yang akurat	Motif yang sejenis tidak selalu sama benar
8.	Harga jual	Lebih murah	Lebih mahal

Dalam teknik pembuatan batik, malam merupakan salah satu bahan dasar utama. Tersedianya bahan alami untuk membuat malam merupakan salah satu faktor berkembangnya seni batik di Indonesia, khususnya di Pulau Jawa. Malam umumnya berasal dari sarang lebah. Namun di berbagai daerah khususnya di Pulau Jawa malam untuk membatik telah dicampur dengan bahan-bahan lain untuk menghasilkan malam dengan kualitas yang tinggi. Campuran yang digunakan untuk membuat malam berbeda-beda antara daerah yang satu dengan daerah lainnya. Bahkan tidak jarang campuran malam yang digunakan sangat dirahasiakan. Namun, bahan campuran malam yang lazim digunakan adalah *mata kucing* atau damar padat dari pohon sejenis balau dan meranti, damar pohon tusam dan lemak sapi.[79]

[79] Tirta (C), *op.cit.*, hal. 24.

Gambar 6[80]

Gambar 7

Malam dalam bentuk padat.

Di samping malam, bahan dasar pembuatan batik yang menjadi ciri khas dari batik Indonesia adalah bahan pewarna batik yang berasal dari bahan-bahan alami yang dapat ditemukan di Indonesia. Berbagai tanaman yang menjadi bahan dasar pewarna pada batik merupakan tanaman yang tersebar di berbagai wilayah Indonesia khususnya di Pulau Jawa. Pewarna alam pada batik di antaranya berasal dari kulit kayu, kulit buah-buahan, atau daun-daunan yang dihasilkan tanaman tertentu. Warna biru merupakan salah satu warna yang sering digunakan pada batik. Warna biru ini dihasilkan oleh tanaman Indigo (*indigofera sp)*. Proses pewarnaan kain batik menggunakan bahan dasar tanaman indigo ini memakan waktu yang cukup lama karena pigmen biru yang dihasilkan oleh tanaman indigo akan keluar setelah mengalami oksidasi.[81]

[80] Gambar 6 dan 7 adalah Malam dalam bentuk padat. Gambar 6 adalah malam tembok, yaitu malam yang memiliki kualitas yang paling rendah. Sedangkan gambar 7 adalah malam kuning, yaitu malam yang memiliki kualitas yang paling tinggi. Gambar diambil pada Pameran yang diselenggarakan secara bersama oleh Kedutaan Besar Jerman Indonesia, Goethe-Institut Jakarta, dan Kamar Dagang dan Industri Jerman dan Indonesia (EKONID) dengan tema Batik Indonesia "Warisan yang Hidup" pada tanggal 10 Februari 2012 di Galeri Nasional Jakarta.

[81] Tirta (C), *op.cit.,* hal. 26.

Gambar 8[82]

Tanaman Indigo (*Indigofera sp.)*

Selain warna biru, warna coklat menjadi ciri khas batik Jawa. Warna coklat ini dihasilkan dari kulit Pohon Soga (*pelthophorum ferrugineum)* atau kulit kayu mahoni *(Switenia Mahagoni).* Sama halnya dengan pewarnaan dengan tanaman indigo, pewarnaan batik dengan menggunakan kulit Pohon Soga memakan waktu yang tidak sedikit. Matahari berperan penting dalam menghasilkan warna coklat untuk pewarna batik. Sinar matahari yang terik biasanya menghasilkan warna coklat yang lebih cemerlang, sedangkan sinar matahari yang tidak terik akan menghasilkan warna coklat yang pucat atau pudar.[83] Faktor alam pada daerah tertentu juga dapat mempengaruhi hasil warna coklat yang dihasilkan.

Gambar 9[84]

Pelthophorum Ferrygineum

Gambar 10[85]

Kulit Kayu Mahoni *(Switenia Mahagoni)*

[82] Tirta (C), *op.cit.*, hal. 25.

[83] *Ibid.* hal 27.

[84] http://ecocrop.fao.org/ecocrop/ec_images/8410.jpg , diunduh 18 Maret 2010.

[85] Gambar diambil pada Pameran, Batik Indonesia "Warisan yang Hidup" tanggal 10 Februari 2012. *op.cit.*

Kunyit juga sering digunakan dalam proses pewarnaan batik untuk menghasilkan warna kuning. Namun warna kuning yang dihasilkan oleh kunyit dinilai tidak stabil dan cepat pudar. Oleh karena itu untuk memberi warna kuning pada batik sering digunakan kulit Pohon Tegerang (*cudrania javanensis*).

Gambar 11[86]

Cudrania Javanensis

Batik yang dihasilkan di Pantai Utara Pulau Jawa ini memiliki ciri khas yang terletak pada warnanya yang cerah. Merah merupakan warna yang sering dipakai pada batik yang dihasilkan di Pantai Utara Pulau Jawa. Untuk menghasilkan warna merah hangat digunakan akar tanaman mengkudu (*morinda citrifolia*).[87]

Gambar 12[88]

Morinda Citrifolia

Ciri khas pada pewarnaan batik, selain dipengaruhi oleh tanaman penghasil warna tersebut juga dipengaruhi oleh unsur air yang terdapat pada suatu daerah.[89]

[86] http://www.henriettesherbal.com/files/images/photos/s/sm/d04_2725_smilax-hispida.thumbnail.jpg, diunduh 18 Maret 2010.

[87] Tirta (C), *op.cit.*, hal. 28.

[88] http://www.metafro.be/prelude/prelude_pic/Morinda_citrifolia1.jpg, diunduh 18 Maret 2010.

[89] Hasil wawancara dengan Neneng Iskandar, seorang pakar batik dan penulis buku *Batik Indonesia dan Sang Empu*. Wawancara dilakukan pada tanggal 15 Maret 2010. *op.cit*

Kandungan air yang digunakan untuk merendam kain batik dalam proses pewarnaan memberi hasil warna yang berbeda antara daerah yang satu dengan daerah lainnya, walaupun pewarna yang digunakan adalah pewarna buatan. Contohnya adalah warna merah yang dihasilkan di Lasem memiliki ciri khas yang disebabkan oleh zat yang terdapat pada kandungan air di daerah Lasem. Begitu pun dengan daerah Indramayu yang menghasilkan warna coklat yang khas karena kandungan garam yang tinggi pada air di daerah Indramayu.

Ciri khas batik Indonesia selanjutnya merupakan motif latar dari batik atau yang disebut dengan istilah *isen-isen*. Kata *isen-isen* memiliki arti isian. Isen-isen digunakan untuk mengisi motif batik atau latar motif batik yang berfungsi untuk mempertajam motif batik. Isen-isen dapat berupa titik, garis, atau perpaduan antara keduanya. Menurut Iwan Tirta, perpaduan antara *isen-isen* dengan ragam hias yang luas merupakan kekhasan batik Indonesia karena *isen-isen* tidak ditemukan pada batik yang dihasilkan oleh negara lain.[90] *Isen-isen* tidak hanya motif latar dari sebuah batik. *Isen-isen* juga merupakan indikator asal sebuah batik. Sama halnya dengan motif, *isen-isen* yang terdapat pada batik pedalaman terikat oleh aturan keraton. Di lain pihak, *isen-isen* yang terdapat pada batik pesisir memiliki pergerakan yang lebih bebas karena tidak terikat dengan aturan keraton.

Sebagai suatu motif latar, *isen-isen* tidak hanya merupakan kumpulan titik dan garis. *Isen-isen* seperti dengan motif pada batik, memiliki pola tertentu. Terdapat berbagai macam pola *isen-isen*. *Isen-isen* juga memiliki fungsi yang berbeda antara satu dengan lainnya. Umumnya pola *isen-isen* dibagi menjadi dua yaitu (i) *isen-isen* yang digunakan untuk mengisi motif batik dan (ii) *isen-isen* yang digunakan untuk mengisi latar batik.[91] Pola *isen-isen* yang beragam dan perbedaan karakter isen-isen antara batik pedalaman dengan batik pesisir mengakibatkan keahlian untuk membuat pola *isen-isen* terbatas pada pusat perbatikan tertentu. Hal ini mengakibatkan pembatik dari daerah pesisir Pulau Jawa belum tentu dapat membuat pola *isen-isen*

[90] Tirta (A), *op.cit.*, hal. 50.

[91] Yayasan Harapan Kita, *op.cit.*, hal. 50.

batik pedalaman.[92] Begitu juga sebaliknya, pembatik yang berasal dari Solo atau Yogyakarta belum tentu dapat membuat pola *isen-isen* batik pesisir.[93]

B. Perkembangan Batik Dari Masa Ke Masa

1. Batik Sebelum Abad 9 Masehi

Asal mula perkembangan batik sebagai suatu karya seni tidak diketahui secara pasti asal-muasalnya. Terdapat perbedaan pandangan di antara para ahli tentang awal perkembangan batik. Hal ini disebabkan belum adanya penelitian secara mendalam tentang asal-muasal teknik membatik. Teknik membuat ragam hias dengan cara merintang warna merupakan suatu teknik yang kuno. Di Mesir teknik pencegahan pewarnaan dikenal sejak abad ke-4 SM.[94] Di Asia teknik yang serupa telah diterapkan di Cina pada masa Dinasti T'ang, sekitar tahun 618-907 M. Teknik ini juga berkembang di India serta di Jepang, pada masa periode Nara, antara tahun 645-794 M.[95] Walaupun teknik penahan pewarnaan pada kain telah ditemukan di negara lain, Indonesia merupakan negara yang mengeksploitasi dan mengembangkan teknik ini dan menjadikannya sebagai suatu karya seni secara maksimal, sehingga muncul suatu kekhasan tersendiri akan batik Indonesia.[96]

Melihat penemuan teknik merintang warna yang terdapat di negara lain, banyak pendapat yang menyatakan bahwa batik tidak berasal dari Indonesia. Berbagai pendapat tersebut menyatakan bahwa batik di bawa ke Indonesia melalui

[92] Tirta (A), *op.cit.*, hal. 53

[93] *Ibid.*

[94] Tim Sanggar Batik Barcode, *op.cit.*, hal. 83.

[95] *Ibid.*

[96] Hasil wawancara dengan Kahfiati Kahdar Ketua Bidang Studi Kria Fakultas Seni Rupa dan Desain Institut Teknologi Bandung, Ratna Panggabean Ketua Kelompok/Keilmuan Kria dan Tradisi Fakultas Seni Rupa dan Desain Institut Teknologi Bandung, dan Ahdiar Romadoni Divisi HKI dan Hukum LPIK ITB dan Tim Ahli HKI DP2M DIKTI. Wawancara dilakukan pada tanggal 2 Maret 2010. Pengembangan teknik batik secara maksimal yang dilakukan oleh Indonesia yang kemudian menjadi salah satu faktor pendukung diakuinya batik oleh UNESCO sebagai warisan budaya dunia milik Indonesia karena belum ada negara yang mengungguli Indonesia dalam mengembangkan batik. Pengakuan UNESCO terhadap batik akan dijelaskan lebih lanjut dalam sub.bab D tentang batik sebagai warisan budaya.

para pedagang asing, khususnya pedagang dari India. Namun demikian, tidak tertutup kemungkinan bahwa batik berkembang di Indonesia. Di berbagai wilayah Indonesia telah berkembang teknik merintang warna pada kain yang menggunakan bubur beras ketan sebagai alat perintang. Iwan Tirta menyatakan bahwa teknik merintang warna yang menggunakan beras ketan ini adalah tahap awal perkembangan batik di Indonesia.[97] Lebih lanjut, Iwan Tirta juga menyatakan bahwa terdapat kain *ma'a* yang ditemukan di wilayah Toraja, Sulawesi Selatan yang merupakan kain yang pola ragam hiasnya dilakukan dengan teknik merintang warna dengan menggunakan bubur beras ketan dan pembuatannya menggunakan suatu alat seperti sebuah pena.[98] Yang kemudian menguatkan pendapat bahwa batik berkembang di Indonesia tanpa adanya pengaruh dari luar adalah kain ma'a ini berkembang di wilayah pegunungan yang tidak mendapat pengaruh dari budaya India.[99]

2. Batik Antara Abad 9 Masehi dan Abad 18 Masehi

Perkembangan batik di antara abad ke-9 hingga abad ke-18 memiliki kaitan yang kuat dengan perkembangan kerajaan-kerajaan di Pulau Jawa. Banyak motif batik, khususnya batik pedalaman yang dapat ditemukan pada relief-relief candi yang berasal dari sekitar abad ke-9 hingga abad ke-13. Motif batik tersebut umumnya terletak pada pakaian yang dikenakan oleh penggambaran dewa-dewa. Beberapa contoh motif batik yang ditemukan pada arca dewa-dewa antara lain motif lereng pada pakaian yang dikenakan oleh Dewa Siwa di Candi Dieng, motif ceplok pada pakaian Ganesha di Candi Banon Borobudur, dan patung Dewa Siwa di Singosari, serta motik nitik pada patung Padmapani di Semarang. Selanjutnya, motif kawung juga ditemukan pada relief Candi Borobudur.

[97] Tirta (A), *op.cit.*, hal. 31.

[98] *Ibid.*, hal. 34.

[99] *Ibid.* Untuk penjelasan lebih lanjut tentang hubungan persebaran pengaruh Indonesia dalam bidang tekstil melalui perdagangan internasional sebelum masa penjajahan yang menguatkan pendapat bahwa batik berkembang di Indonesia dapat diperoleh dalam buku karangan Michael Hitchcock dengan judul *Indonesian Textile* dan buku karangan Irawan Djoko Nugroho dengan judul *Majapahit Peradaban Maritim Ketika Nusantara Menjadi Pengendali Pelabuhan Dunia.*

Motif batik juga ditemukan pada arca yang ditujukan sebagai persembahan bagi raja-raja Jawa. Dalam kebudayaan masyarakat Jawa, raja umumnya digambarkan dalam wujud dewa. Hal ini tampak pada arca di Jawa Timur, seperti arca Wisnu yang mengenakan kain panjang dengan corak batik. Arca Wisnu ini banyak dipercaya sebagai penggambaran dari Raden Wijaya. Motif ceplok juga ditemukan pada arca Pradjnaparamita di Candi Singosari. Berdasar penelitian yang dilakukan oleh Earl Drake seorang mantan duta besar Kanada untuk Indonesia, arca Pradjnaparamita tersebut merupakan perwujudan dari Gayatri Rajapatni istri dari Raden Wijaya.

Berbagai penemuan motif batik yang terdapat di beberapa wilayah di Pulau Jawa menunjukkan bahwa batik telah berkembang menjadi seni yang tinggi sejak setidaknya sebelum masa Kerajaan Majapahit. Hal ini disebabkan bahwa motif yang terdapat pada arca-arca tersebut adalah motif yang memerlukan kehalusan dalam pembuatannya. Banyak pendapat dari para ahli juga menyatakan bahwa motif-motif tersebut hanya dapat digunakan dengan menggunakan canting. Namun demikian, seni tersebut belum disebut sebagai batik, karena batik pada zaman dahulu lebih dikenal dengan sebutan lukisan. Salah satu bukti bahwa batik telah berkembang di Indonesia adalah melalui bukti tertulis berupa catatan dalam kitab Pararaton bahwa pada tahun 1198 Saka atau tahun 1276 M pada saat Kertanegara memerintah Daha, seni batik sudah dikenal.[100] Bukti tertulis lain yang menunjukkan telah dikenalnya batik di Indonesia, adalah dokumen yang ditulis di atas daun lontar yang memuat keterangan tentang batik tulis pada tahun 1518 M.[101]

Dengan banyaknya arca dan bukti tertulis tentang batik yang berasal dari kerajaan-kerajaan Jawa besar di Jawa Timur, diperkirakan bahwa persebaran batik di Pulau Jawa dimulai di Jawa Timur dan kemudian masuk ke wilayah Jawa Tengah.

[100] Dalam cerita tersebut dijelaskan bahwa Raden Wijaya, saat meloloskan diri dari kejaran tentara Daha, membagikan celana dari kain batik kepada para pengikutnya. Melalui cerita tersebut ditarik kesimpulan bahwa batik telah dikenal di Indonesia setidaknya sebelum masa Kerajaan Majapahit.

[101] Yussac, *op.cit.*, hal 12.

Menjelang kemunduran Kerajaan Majapahit dan masukknya Islam ke Pulau Jawa, para abdi dalem dan prajurit kerajaan yang melarikan diri ke wilayah Jawa Tengah dan wilayah pesisir Pulau Jawa. Hal ini disebabkan adanya kebijakan dari keraton yang melarang warga keraton untuk memeluk agama Islam.[102] Para abdi dalem yang melarikan diri banyak yang memiliki keahlian membatik, sehingga mereka kemudian mengajarkan cara membatik kepada masyarakat di tempat mereka menetap.

Seni membatik, menurut KRT Hardjonagoro[103] mencapai puncak perkembangannya pada masa kekuasaan Sultan Agung Hanyokrokusumo dari Kerajaan Mataram pada abad ke-17.[104] Perkembangan batik selanjutnya terwujud dengan perdagangan batik secara internasional yang semakin marak pada masa Kerajaan Mataram. Perdagangan batik secara internasional pada masa ini juga meliputi perdagangan bahan dasar batik berupa kain mori. Pada masa ini mulau terdapat variasi kain mori antara hasil produksi lokal dan bahan katun mori yang diimpor dari India. Dalam lingkungan Keraton Solo dan Yogyakarta batik merupakan suatu simbol status sosial terutama bagi kaum ningrat. Batik pada mulanya hanya dihasilkan oleh seniman dalam lingkungan keraton. Dengan semakin banyaknya keluarga keraton yang meninggalkan lingkungan keraton, maka seni membatik mulai diperkenalkan dan berkembang di luar keraton. Namun demikian, Neneng Iskandar berpendapat bahwa seni batik merupakan seni rakyat yang terlebih dahulu berkembang di luar lingkungan keraton. Pendapat Neneng Iskandar, diperkuat oleh pendapat dari K.R.A Hardjosoewarno[105] yang menyatakan bahwa masyarakat Jawa

[102] Yusak Anshori dan Adi Kusrianto, *op.cit.,* hal. 6.

[103] K.R.T Hardjonagoro atau yang sering dikenal dengan nama Go Tik Swan Panembahan Hardjonagoro atau Go Tik Swan, merupakan seorang budayawan Jawa keturunan Tionghoa yang merupakan seorang pakar keris, wayang, tari, ilmu kejawen serta batik. Pada tanggal 11 September 1972, Go Tik Swan diangkat menjadi bupati keraton Solo. Go Tik Swan juga merupakan pelopor *batik Indonesia* yaitu gaya batik yang berkembang setelah Indonesia merdeka untuk menunjukkan konsep negara kesatuan. Oleh Bung Karno, Go Tik Swan pernah dipercaya untuk menyelenggarakan pameran batik di hadapan tamu negara.

[104] Lee, *op.cit.,* hal. 18.

[105] K.R.A Hardjosoewarno adalah penerus dari K.R.T Hardjonagaro. K.R.A Hardjosoewarno adalah seorang budayawan Jawa yang menekuni bidang keris dan batik.

yang tinggal di luar keraton umumnya mengisi kegiatan mereka di sela-sela masa panen dengan membatik. Menurut K.R.A Hardjosoewarno, ada suatu siklus perputaran batik antara lingkungan keraton dengan masyarakat di luar lingkungan keraton.[106] Batik yang dihasilkan oleh masyarakat di luar keraton akan dibawa ke dalam keraton. Batik tersebut pada umumnya memiliki motif yang cenderung lebih kasar. Di dalam keraton, motif batik tersebut akan diperhalus dan pada tahap selanjutnya, batik tersebut kembali beredar di masyarakat luas.

3. Batik Pada Masa Kejayaannya

Pada abad ke-18 hingga abad ke-19, batik mencapai masa kejayaannya. Masuknya saudagar dari Cina, India, Arab, dan Eropa mempengaruhi perkembangan motif batik yang dihasilkan di pesisir Pulau Jawa. Meningkatnya populasi Pulau Jawa menimbulkan suatu akulturasi budaya pada wilayah pesisir, yang tertuang dalam motif batik yang dihasilkan. Meningkatnya minat akan batik ini yang melatarbelakangi diciptakannya canting cap untuk meningkatkan hasil produksi batik. Kota Pekalongan kemudian menjadi pusat batik terbesar di Jawa dan lebih berorientasi komersial. Di Pekalongan dan di kota-kota sekitar Pekalongan batik berkembang menjadi suatu komoditas niaga.[107] Dari Pekalongan juga pewarnaan batik menggunakan zat pewarna buatan mulai berkembang untuk menghemat waktu dalam proses pewarnaan. Pada sekitar tahun 1840 pengusaha batik non-pribumi, baik asing maupun peranakan, mulai bertebaran dan meningkatkan persaingan di antara para pengusaha batik.

Batik Cina merupakan salah satu batik yang berkembang pada abad ke-19 di Jawa. Batik ini merupakan bentuk akulturasi budaya Jawa dengan budaya Cina. Inger McCabe Elliot membagi karakter batik Cina berdasar dua periode yaitu sebelum tahun 1910 dan setelah tahun 1910. Sebelum tahun 1910 batik Cina diproduksi untuk

[106]Hasil wawancara dengan K.R.A Hardjosoewarno, Ibu Supiyah Anggriyani Hardjosoewarno, dan Neneng Iskandar. Wawancara dilakukan pada tanggal 29 April 2010 di Solo.

[107] Tirta (C), *op.cit.,* hal. 95.

keperluan pribadi dan untuk keperluan upacara-upacara adat tertentu.[108] Tampilan batik Cina tidak jauh berbeda dengan tampilan batik yang dihasilkan di pesisir Jawa. Ragam hias dari batik Cina umumnya berupa motif diagonal, flora, maupun fauna. Warna yang digunakan adalah warna-warna alam seperti merah, biru, dan hijau. Setelah tahun 1910 situasi politik dan penggunaan pewarna sintetis mengubah tampilan batik Cina. Batik Cina menjadi lebih berwarna dan pengembangan motif yang rumit dan isen mulai ditampilkan pada batik Cina. Corak pada batik Cina mengacu pada penggolongan tingkat-tingkat usia.

Selain masyarakat keturunan Cina, masyarakat Belanda dan keturunan Belanda turut serta dalam industri batik. Pembuatan batik di kalangan Belanda dimulai pada abad ke-19. Namun periode kebangkitan batik Belanda dimulai pada tahun 1890. Pelopor dalam usaha batik Belanda antara lain adalah Eliza van Zuijlen dan B. Fisher. Pada masa kebangkitan batik Belanda ini, golongan peranakan Cina mulai turut memproduksi *Batik Belanda*. Produksi batik Belanda ini membuka alur desain baru pada batik motif batik Belanda, yang umumnya berkisar pada ingatan pada peristiwa tertentu, seperti tokoh dalam cerita maupun motif seperti kapal pesiar.[109] Pada masa menjelang Perang Dunia II, terjadi awal kemunduran batik Belanda. Gejala sosial menjelang kemerdekaan dan masuknya pengaruh Jepang menjadi salah satu penyebab kemunduran batik Belanda.

4. Batik Pada Era Modern

Pengaruh Jepang pada seni batik terwujud dalam munculnya gaya batik baru, yaitu *batik gaya hokokai*. Ciri khas batik Hokokai adalah motifnya yang dipenuhi detail rumit. Unsur Jepang pada motif batik Hokokai terletak pada ditampilkannya gambar bunga sakura. Desain baru yang muncul kemudian adalah *gaya pagi-sore*. Pada batik gaya pagi-sore terdapat dua motif yang berbeda pada sehelai kain, sehingga dengan cara pemakaian tertentu sehelai kain batik gaya pagi-sore dapat

[108] Elliot, *op.cit.*, hal. 118-120.

[109] *Ibid*, hal. 105.

terlihat seperti dua helai kain yang berbeda. Gaya batik yang berkembang pada masa pendudukan Jepang selanjutnya adalah *gaya terang bulan*, menyusutkan motif tradisional menjadi elemen-elemen pola.[110] Pada gaya batik terang-bulan motif diletakkan di bagian pinggir kain dan meniadakan desain motif pada bagian tengah kain.

Kemerdekaan Indonesia memberi corak baru dalam seni batik. Yang pertama adalah *gaya tiga negeri*, yang memadukan ciri khas dan unsur dari tiga daerah penghasil batik. Yang kedua adalah *gaya Batik Indonesia*, yang merupakan batik dengan kombinasi motif batik pedalaman dari Solo dan Yogyakarta dengan menggunakan warna dan teknik batik pesisiran. Batik Indonesia ini dipelopori oleh K.R.T Hardjonagoro dengan imbauan dari presiden pertama Republik Indonesia Soekarno. Batik Indonesia ditujukan untuk menimbulkan semangat persatuan dan identitas bangsa Indonesia sebagai negara baru. Walaupun Batik Indonesia merupakan perpaduan dari dua gaya batik yang berbeda, K.R.T Hardjonagoro melihat Batik Indonesia sebagai pengembangan medium dan teknik semata. Hal tersebut disebabkan, K.R.T Hardjonagoro tetap memasukkan filosofi yang terkandung dalam Batik Indonesia tetap merupakan filosofi masyarakat Jawa yang kuno.[111]

Pada tahun 1960-an muncul sebuah gejala baru dalam seni batik. Perancang batik atau desainer mulai bermunculan, seperti Iwan Tirta yang merupakan murid dari K.R.T Hardjonagoro, dalam mengembangkan batik ke kancah modern melalui pergelaran busana dan semakin membuka perdagangan batik hingga dunia internasional sebagai suatu adibusana. Inovasi yang dilakukan oleh Iwan Tirta antara lain tertuang pada ragam hias dan bahan dasar yang digunakan. Pada tahun 2008, terdapat suatu perkembangan baru dalam membuat batik yaitu dengan menggunakan matematika yang diaplikasikan melalui suatu piranti lunak dalam komputer. Batik yang dikenal sebagai *batik fractal* ini membuka perkembangan motif batik tanpa

[110] *Ibid*, hal. 150.

[111] Neneng Iskandar, *Batik Indonesia dan Sang Empu*, (Jakarta: Tim Buku Srihana, 2008), hal. 49.

merubah teknik membatik dengan menggunakan canting dan malam. Pada batik fractal, pengrajin membuat pola motif batik dengan menggunakan suatu program dalam komputer. Pola yang telah disusun kemudian di cetak pada sehelai kertas atau kain dan dilanjutkan dengan proses pemalaman dengan menggunakan canting.[112]

Dengan semakin berkembangnya seni batik, batik banyak diaplikasikan ke dalam berbagai bentuk. Dari segi busana, produksi massal batik telah banyak dilakukan untuk menarik minat pasar yang lebih luas. Namun, batik tidak hanya ditujukan sebagai suatu busana. Batik dalam perkembangannya mulai diaplikasikan untuk kegunaan dekorasi interior dan lukisan atau hiasan dinding. Ragam hias batik pun dapat diaplikasikan ke dalam wujud keramik ataupun perak dan perhiasan.

C. Jenis-Jenis Batik Jawa

1. Batik Pedalaman

Batik pedalaman, yang dihasilkan di lingkungan Keraton Solo dan Yogyakarta, tidak lepas dari budaya feodal yang ada di lingkungan keraton. Di Yogyakarta terdapat kekuasaan raja Jawa, yaitu Kasultanan Ngayogyakarta Hadiningrat dan di Solo juga terdapat kekuasaan raja Jawa, yaitu Kasunanan Surakarta. Filosofi asli Jawa yang dikenal dengan *kejawen* dan pengaruh Hindu-Budha yang hidup dalam lingkungan keraton memberi pengaruh yang kuat pada motif atau ragam hias yang berkembang pada wilayah pedalaman Jawa. Dalam lingkungan keraton, proses membatik mengandung nilai filosofi hidup yang tinggi. Menurut K.R.T. Hardjonagoro batik memiliki keterkaitan hubungan yang sangat erat dengan kesenian wayang, keris, dan seni tari Jawa.[113] Proses kegiatan membatik bagi masyarakat yang hidup dalam pengaruh keraton merupakan suatu kegiatan kebatinan ataupun suatu wujud meditasi. Karena adanya kepercayaan bahwa akhlak manusia

[112] Hasil wawancara dengan Nancy Margried, CEO dan Co-Founder Piksel Indonesia, Batik Fractal Indonesia. *op.cit.*

[113] *Ibid.*

dibina melalui kewajiban mempelajari kesenian, maka batik keraton adalah produk yang mengacu pada nilai-nilai tradisi Jawa.[114]

Dalam keraton di Jawa, khususnya di Solo dan Yogyakarta, desain atau ragam hias terinspirasi oleh ritual.[115] Ragam hias yang dihasilkan di wilayah ini memiliki gaya khasnya sendiri yaitu berbentuk geometris, tersusun secara rapi, dan teratur susunannya. Ragam hias pada batik pedalaman pun merupakan simbol-simbol dari makna kehidupan. Seperti yang diungkapkan oleh Achmad Haldani bahwa keindahan batik pedalaman dapat dilihat jika terlebih dahulu dicapai pemahaman akan makna di balik simbol tersebut. Contoh dari ragam hias batik pedalaman adalah *kawung*. Ragam hias kawung, yang merupakan susunan lingkaran yang saling bersentuhan, dapat ditemui pada relief-relief candi Prambanan dan pada pahatan jubah patung-patung Jawa-Hindu. Lingkaran-lingkaran pada motif kawung menggambarkan kepercayaan masyarakat Jawa pedalaman akan semesta yang terstruktur, di mana penggambaran inti yang terdapat di antara lingkaran dalam motif kawung merupakan perlambangan sumber energi yang universal.[116] Achmad Haldani pun berpendapat bahwa pemaknaan di balik kawung dapat diterjemahkan sebagai kehidupan masyarakat Jawa pedalaman dengan keraton sebagai pusat kehidupannya.

Terkait dengan ragam hias, terdapat suatu simbol status sosial pada batik pedalaman. Batik merupakan busana yang wajib dikenakan dalam lingkungan keraton. Dengan meluasnya pemakaian batik pada masyarakat di luar lingkungan keraton, maka pihak keraton pun mengeluarkan peraturan mengenai motif batik yang hanya dapat dipakai oleh raja dan keluarganya. Motif batik ini dikenal dengan sebutan *motif larangan*. Motif larangan pada batik antara lain:[117](i) motif kawung, (ii) motif parang, (iii) motif parang rusak, (iv) motif cemukiran, (v) motif sawat, (vi) motif udan liris, (vii) motif semen, dan (viii) motif alasalasan.

[114] Yayasan Harapan Kita, *op.cit.*, hal. 59.

[115] Iwan Tirta (B), *op.cit.*, hal. 59.

[116] Inger McCabe Elliott, *op.cit.*, hal. 67.

[117] *Ibid*, hal. 68.

Dilihat dari segi warna, batik pedalaman memiliki ciri khas warna yang netral seperti warna biru, putih, dan coklat. Warna pada batik pedalaman cenderung memiliki nuansa yang tenang karena warna yang umum digunakan adalah warna netral. Hal ini tidak terlepas dari pengaruh kehidupan keraton yang tertutup dan feodal. Bahkan, hingga saat ini di lingkungan Keraton Yogyakarta terdapat larangan untuk memakai batik pesisir dalam menjalankan kegiatan keraton.[118]

2. Batik Pesisir

Batik pesisir merupakan batik yang dihasilkan di wilayah Pantai Utara Pulau Jawa. Pusat pembatikan di pesisir Pulau Jawa tersebar dari Barat ke Timur meliputi daerah Indramayu, Cirebon, Tegal, Pekalongan, Juana, Rembang, Lasem, Tuban, Sidoharjo, dan Madura. Dengan lokasinya yang dekat dengan jalur perdagangan ragam hias pada batik pesisir banyak dipengaruhi oleh kebudayaan asing, sehingga batik pesisir merupakan perwujudan akulturasi budaya. Nuansa keraton juga terdapat dalam batik pesisir, yaitu pada batik yang dihasilkan di Cirebon. Namun, berbeda dengan batik pedalaman nuansa keraton pada *batik Cirebon* ragam hias bersifat naturalis dengan menampilkan gambar singa barong maupun naga pada batik. Batik Cirebon banyak dipengaruhi oleh budaya Hindu-Islam dalam ragam hiasnya. Budaya Cina pun banyak mempengaruhi batik yang dihasilkan di lingkungan keraton Cirebon.

Batik yang dihasilkan di pesisir Pulau Jawa umumnya memiliki ciri khas warna yang terang seperti merah dan biru. Namun, setiap daerah pembatikan juga memiliki ciri khas masing-masing yang tertuang dalam ragam hias batik. Batik yang dihasilkan di Indramayu memiliki kekhasan pada perpaduan antara warna gelap dan terang. *Batik Indramayu* banyak dipengaruhi oleh budaya Cina. Ragam hias yang menonjol dalam batik Indramayu adalah ragam flora dan fauna yang diungkap secara datar dengan banyaknya bentuk lengkung dan garis-garis yang meruncing. Berbeda dengan batik Indramayu, batik yang dihasilkan di Pekalongan memiliki ciri motif yang dinamis yang berubah sesuai dengan permintaan pasar. Para perajin *batik*

[118] *Ibid*, hal. 64.

Pekalongan banyak melakukan perkembangan dalam teknik membatik. Banyak dilakukan pengembangan desain baru pada batik. Untuk meningkatkan efisiensi, perajin batik Pekalongan membentuk canting dengan ukuran lebih besar dari canting pada umumnya. Kemudian jumlah isen-isen atau hiasan motif pada batik ditingkatkan jumlahnya. Kedinamisan dalam batik Pekalongan juga timbul dalam warna batik Pekalongan. Perbedaan mendasar yang terdapat pada batik pedalaman dan batik pesisir adalah tujuan dari proses membatik itu sendiri. Batik pedalaman diciptakan sebagai bentuk ekspresi budaya masyarakat secara internal, di mana batik digunakan oleh pribadi bersangkutan maupun orang terdekat dan sebagai wujud status dalam masyarakat. Sedangkan batik pesisir merupakan suatu ekspresi budaya yang bebas dan terbuka.

D. Batik Sebagai Warisan Budaya

Budaya merupakan perwujudan jati diri suatu bangsa. Melalui budaya yang dimiliki dan hidup di tengah masyarakat, karakter suatu bangsa akan terbentuk. Oleh karena itu, budaya memberi identitas pada bangsa yang membedakan bangsa yang satu dengan bangsa lainnya. Budaya hidup dalam masyarakat melalui proses pewarisan budaya dan selalu berkembang. Warisan budaya merupakan suatu apresiasi bangsa terhadap lingkungannya dan perwujudan akan kepercayaan, pandangan, dan cita-cita suatu bangsa. Ekspresi berbudaya merupakan bagian dari hak asasi manusia. Batik merupakan salah satu warisan kebudayaan Indonesia. Sebagai suatu warisan budaya, sudah sewajarnya jika batik harus selalu dilestarikan dan dilindungi. Terutama batik telah menjadi bagian hidup dari masyarakat Indonesia, khususnya masyarakat Jawa.

Pada tanggal 28 September 2009 UNESCO mengakui batik sebagai warisan budaya umat manusia yang dihasilkan oleh Indonesia. Penghargaan resmi terhadap pengakuan ini dilaksanakan pada tanggal 2 Oktober 2009 di Abu Dhabi. Dengan diakuinya batik sebagai warisan budaya dunia yang berasal dari Indonesia, maka tugas bangsa Indonesia untuk melestarikan batik menjadi semakin besar. *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage* menyatakan

bahwa suatu warisan budaya memberi suatu identitas bagi masyarakat dan merupakan suatu budaya yang hidup, bukan merupakan budaya yang telah mati.[119] Dari pernyataan tersebut, maka terdapat suatu keharusan bagi bangsa Indonesia yang telah diakui sebagai pemilik dari budaya batik untuk terus mengembangkan dan melestarikan seni batik agar seni batik dapat terus hidup di tengah masyarakat Indonesia, terutama batik Jawa.

Batik telah hidup di tengah masyarakat Indonesia dalam jangka waktu yang sangat lama. Keberagaman sejarah Indonesia dalam perjalanannya telah memberi warna pada perkembangan batik yang dihasilkan di Indonesia. Setiap era dalam kehidupan bangsa Indonesia, khususnya masyarakat Jawa memberi untaian ragam baru dalam dunia perbatikan tanah air. Banyak kalangan yang menyatakan bahwa batik merupakan suatu karya adiluhung bangsa Indonesia. Sebagai suatu warisan budaya, batik merupakan suatu catatan sejarah hasil pemikiran dan filosofi hidup nenek moyang bangsa Indonesia yang tertuang pada ragam hias batik. Bahwa di balik motif suatu batik terdapat suatu cerita dan pelajaran hidup yang memiliki sifat yang universal.

E. Batik Sebagai Komoditas Perdagangan

Nilai estetika batik yang tinggi dan kebutuhan masyarakat akan batik membuka awal perdagangan batik. Perdagangan batik dimulai melalui perdagangan antar masyarakat Jawa. Pada mulanya, ragam hias batik menunjukkan ciri khas pembuat batik. Hal ini kemudian mendorong perdagangan batik karena tingginya

[119] Pasal 1 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage berbunyi *"The "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development."*
Indonesia merupakan negara peserta pada konvensi ini dan mendaftarkan acceptance akan konvensi ini pada tanggal 15 Oktober 2007.

kebutuhan masyarakat akan batik dan tidak semua anggota masyarakat dapat membuat sebuah batik.[120] Perdagangan batik pun kemudian menarik minat bangsa asing. Hal ini terbukti pada berbagai usaha yang dilakukan oleh pengusaha asing untuk memproduksi batik tiruan, yaitu kain yang diproduksi tanpa menggunakan teknik menahan warna dengan malam dan dengan menaburkan ragam hias seperti kain batik. Sir Thomas Stamford Raffles, misalnya, membawa berbagai macam kain batik kembali ke Inggris agar dapat dibuat tiruannya oleh Inggris dan dijadikan komoditas perdagangan bagi masyarakat Inggris.

Batik tiruan yang diproduksi tanpa menggunakan teknik membatik hasilnya ternyata tidak dapat menyaingi batik produksi Jawa.[121] Selain Inggris, batik telah menarik perhatian bangsa Belanda. Pada tahun 1835 sebuah pabrik batik dengan mempekerjakan pekerja-pekerja Jawa didirikan di Leiden.[122] Pabrik batik ini memproduksi batik tiruan yang selanjutnya akan dijual di Jawa. Produksi batik tiruan pun selanjutnya dilakukan oleh para pedagang dari Cina. Dengan adanya komersialisasi batik khususnya batik tiruan oleh pedagang asing ini, maka timbul suatu persaingan etnis pada industri batik. Pada saat munculnya ancaman terhadap industri batik, pada tahun 1850-an penemuan canting cap memberi revolusi bagi industri batik lokal yang dapat meningkatkan produksi batik tanpa menghilangkan unsur tradisional dalam membatik.[123]

F. Batik Sebagai Kekayaan Intelektual

Di samping peran batik sebagai suatu warisan budaya yang perlu untuk dilestarikan dan dikembangkan, batik juga merupakan suatu hasil kekayaan intelektual bangsa Indonesia. Kekayaan intelektual muncul karena adanya kreativitas.

[120] Hasil wawancara dengan Ibu Suliantoro, pakar batik dan anggota Paguyuban Batik Sekar Jagad. Wawancara dilakukan pada tanggal 1 Mei 2010 di Yogyakarta.

[121] Hitchcock (A), *op.cit.*, hal. 86.

[122] Dharsono Sony Kartika, *Budaya Nusantara: Kajian Konsep Mandala dan Konsep Tri-Loka terhadap Pohon Hayat pada Batik Klasik*, (Bandung: Rekayasa Sains Bandung, 2007), hal. 69.

[123] *Ibid.* hal. 70.

WIPO memberi definisi atas hak kekayaan intelektual sebagai suatu kreasi yang dihasilkan dari pikiran manusia yang meliputi invensi, karya sastra dan seni, simbol, nama, citra, dan desain yang digunakan dalam perdagangan.[124] Pada sebuah helai batik terkandung nilai ekonomis dan moral yang sangat kuat. Ragam hias batik yang indah dan mengandung nilai filosofi dan gambaran akan alam tidak hanya menarik minat masyarakat penghasil batik tetapi juga menarik minat bangsa asing. Nilai ekonomis dari sehelai kain batik telah disadari oleh bangsa asing sejak lama.

Tindakan peniruan motif baik yang dilakukan oleh pengusaha asing dan perajin batik dalam negeri sejak awal perkembangan industri batik mendorong adanya perlindungan hukum terhadap batik agar tidak merugikan perancang batik maupun produsen dan perajin batik terutama di masa yang akan datang. Dari lingkungan keraton, perlindungan tersebut telah dilakukan dengan peraturan resmi yang dikeluarkan keraton akan larangan penggunaan motif tertentu yang hanya dapat digunakan oleh keluarga kerajaan. Dalam lingkup hukum nasional, perlindungan akan batik telah dilakukan dalam Pasal 10 Undang-Undang Nomor 19 Tahun 2002 tentang Hak Cipta.[125] Sedangkan di dunia internasional usaha yang telah dan sedang dicanangkan adalah melalui perlindungan oleh UNESCO dan WIPO sebagai organisasi internasional dalam hal pendidikan dan kebudayaan serta dalam bidang hak kekayaan intelektual.[126]

[124] "What is Intellectual Property" , http://www.wipo.int/about-ip/en/, diakses 17 Februari 2010.

[125] Indonesia, *Undang-Undang Hak Cipta*, UU No.19 Tahun 2002, LN No.85, TLN No.4220, Ps 10.

Pasal 10 UU No. 19 Tahun 2002 mengatur mengenai : (1) Negara memegang hak cipta atas karya peninggalan prasejarah, sejarah, dan benda budaya nasional lainnya. (2) Negara memegang hak cipta atas *folklore* dan hasil kebudayaan rakyat yang menjadi milik bersama, seperti cerita, hikayat, dongeng, legenda, babad, lagu, kerajinan tangan, koreografi, tarian, kaligrafi, dan karya seni lainnya. (3) Untuk mengumumkan atau memperbanyak Ciptaan tersebut pada ayat (2), orang yang bukan warga negara Indonesia harus terlebih dahulu mendapat izin dari instansi yang terkait dalam masalah tersebut. (4) Ketentuan lebih lanjut mengenai Hak Cipta yang dipegang oleh Negara sebagaimana dimaksud dalam Pasal ini, diatur dengan Peraturan Pemerintah.

[126] Perlindungan yang dilakukan oleh UNESCO dan WIPO berupa konvensi yang dihasilkan oleh UNESCO dalam kaitannya dengan perlindungan warisan budaya maupun *Model Provisions* yang dihasilkan oleh WIPO-UNESCO.

G. Industri Berbasis Budaya, Industri Kreatif, dan Ekonomi Kreatif

Konsep industri berbasis budaya pertama kali dicetuskan pada tahun 1930-an. Pada awal perkembangannya, industri berbasis budaya dipandang memiliki dampak negatif terhadap kebudayaan. Hal ini disebabkan adanya penurunan nilai budaya sebagai akibat dari industri berbasis budaya.[127] Industri berbasis budaya hingga saat ini masih banyak diperdebatkan dalam dunia internasional. Perdebatan tentang industri berbasis budaya disebabkan bahwa budaya dan industri merupakan dua konsep yang saling berlawanan. Budaya sebagai konsep merupakan jati diri manusia dan masyarakat. Konsep budaya menilik jauh kepada sejarah dan ekspresi diri manusia dan masyarakat yang harus dilestarikan. Di lain pihak, konsep industri berkaitan erat dengan eksploitasi suatu komoditas perdagangan yang dilakukan untuk memperoleh keuntungan ekonomi.

Tautan antara budaya dan industri tidak dapat dihindari karena dengan perkembangan masyarakat, budaya telah menjelma menjadi sebuah industri yang disebabkan oleh adanya suatu kebutuhan. Sebagai contoh, batik merupakan seni perempuan Jawa. Pada mulanya semua perempuan Jawa diharuskan untuk bisa membuat batik. Peran batik sebagai suatu busana yang digunakan pada acara resmi mengakibatkan adanya kebutuhan masyarakat akan batik. Dalam perkembangannya tidak semua perempuan Jawa dapat membuat batik. Hal ini mengakibatkan munculnya perdagangan batik. Perdagangan batik yang semakin marak yang pada akhirnya melahirkan sebuah industri batik.

Industri berbasis budaya mengalami perkembangan yang relatif cepat. Pada umumnya, industri berbasis budaya membutuhkan tenaga kerja yang memiliki keahlian kreativitas yang tinggi. Industri berbasis budaya memiliki karakter yang lokal, artinya industri ini umumnya berkembang pada daerah tertentu di mana produk budaya dan jasa dihasilkan. Walaupun industri berbasis budaya dalam tingkatan

[127] "Andy C. Pratt, "*Baseline Study of the Cultural Industries in an International Context for Creative Compact*"," http://portal.unesco.org/culture/en/files/41360/12875885065BaselineCulturalIndustries.pdf/BaselineCulturalIndustries.pdf , diunduh 20 Juni 2012.

tertentu mengeksploitasi budaya masyarakat, industri berbasis budaya memiliki dampak positif bagi masyarakat. Dampak positif dari industri berbasis budaya adalah, peningkatan kesejahteraan hidup bagi masyarakat.[128] UNESCO memberi pengertian akan industri berbasis budaya sebagai industri yang mengkombinasikan kreasi, produksi, dan komersialisasi atas budaya yang tidak berwujud dalam bentuk barang ataupun jasa.[129]

Industri berbasis budaya menghasilkan yang disebut sebagai produk budaya. Terdapat suatu kriteria agar suatu produk dapat disebut sebagai produk budaya.[130] Untuk dapat dikatakan sebagai produk budaya, maka barang atau jasa harus mengandung nilai budaya selain nilai ekonomis, di mana nilai budaya tersebut tidak dapat dinilai dalam bentuk nominal.[131] Artinya, barang atau jasa yang dihasilkan melalui produksi budaya memiliki makna budaya bagi penghasil barang atau jasa tersebut dan bagi pihak yang membeli atau menggunakan barang dan jasa tersebut. Lebih lanjut, penilaian terhadap makna budaya tersebut lebih besar dari nilai ekonomi produk budaya. UNESCO melanjutkan bahwa produksi budaya ini dapat memperoleh perlindungan hak cipta. Unsur penting dalam industri berbasis budaya adalah industri berbasis budaya memiliki peran utama dalam mempromosikan dan menjaga keragaman budaya. Di lain pihak, industri berbasis budaya tetap harus memberi akses demokratis terhadap budaya. Dengan kata lain, dikembangkannya industri berbasis

[128] Dominic Power dan Allen J. Scott, *"A Prelude to Cultural Industries and the Production of Culture"* dalam *Cultural Industries and the Production of Culture*, (New York: Routledge, 2004), hal.8.

[129] *United Nations* (A), *op.cit.*, hal. 8.

[130] Kriteria untuk menentukan suatu produk budaya ini ditujukan untuk membedakan produk budaya sebagai suatu komoditas dengan komoditas perdagangan pada umumnya. Pembedaan ini dilakukan karena adanya nilai kultural pada produk budaya. Nilai budaya pada produk budaya ini memiliki sifat yang sensitif karena merupakan bagian dari kebudayaan masyarakat yang berperan sebagai jati diri masyarakat. Sehingga, produk budaya tidak secara murni bersifat komersial semata. Lebih lanjut, terkandungnya nilai budaya tersebut yang mengakibatkan diperlukannya perlindungan hukum terhadap produk budaya.

[131] *United Nations* (B), *Creative Economy Report 2008, The Challenge of Assessing the Creative Economy: Towards Informed Policy-making*, (Jenewa: *United Nations*, 2008), hal. 10. Makna budaya yang terkandung dalam produk budaya dapat berupa nilai estetika dari produk budaya ataupun kontribusi dari kegiatan produksi budaya bagi masyarakat untuk lebih memahami jati diri atau identitas kebudayaan yang dimiliki.

budaya tidak berarti dilakukannya suatu monopoli dan eksploitasi berlebih atas budaya.

Industri berbasis budaya, sebagai bagian dari industri kreatif, pada tahap selanjutnya berperan sebagai salah satu motor penggerak dari industri kreatif. Industri kreatif merupakan industri berbasis pengetahuan yang mengandalkan keterampilan dan kreativitas individu dan masyarakat sebagai modal utamanya. Industri kreatif merupakan konsep yang masih relatif baru. Melalui industri kreatif terdapat persinggungan antara seni, budaya, teknologi, dan ekonomi. Karena karakternya yang kompleks, belum terdapat definisi yang pasti akan industri kreatif. Pemahaman industri kreatif dilakukan dengan melihat karakter-karakter yang dimiliki oleh industri kreatif. *United Nations Conference on Trade and Development* (UNCTAD) memberi definisi industri kreatif sebagai suatu siklus kreasi, produksi, dan distribusi barang dan jasa yang menggunakan kreativitas dan intelektual sebagai modal utama.[132] Lebih lanjut UNCTAD melihat industri kreatif sebagai kegiatan berbasis pengetahuan yang pada umumnya terfokus pada seni yang memiliki potensi untuk menghasilkan pendapatan melalui perdagangan dan hak kekayaan intelektual.[133] Perkembangan industri kreatif memicu munculnya berbagai sektor industri baru yang sebelumnya berada di luar ranah ekonomi seperti budaya. Dengan berkembangnya industri kreatif, komersialisasi budaya menjadi semakin marak dilaksanakan.

Warisan budaya memiliki peran yang penting dalam industri kreatif karena warisan budaya dipandang sebagai sumber utama dari semua bentuk karya seni. Lebih lanjut, budaya memiliki peran yang penting bagi pembangunan sosial dan ekonomi. Oleh karena itu, warisan budaya dilihat sebagai inti dari industri berbasis budaya dan industri kreatif. Melalui industri berbasis budaya dan industri kreatif, peluang bagi negara berkembang untuk turut berpartisipasi dalam perekonomian global semakin besar. Melalui industri kreatif, negara berkembang dapat meningkatkan perkembangan ekonomi nasional dan menciptakan lapangan kerja

[132] *Ibid.*

[133] *Ibid.*

dalam jumlah yang besar. Industri berbasis budaya dan industri kreatif membutuhkan keterampilan dan kreativitas sebagai modal utamanya.

Negara berkembang pada umumnya memanfaatkan ekspresi budaya tradisional sebagai modal pengembangan industri kreatif. Ekspresi budaya tradisional merupakan jati diri suatu bangsa, yang memberi karakter khas pada suatu bangsa dan membedakan bangsa yang satu dengan bangsa yang lain. Kekhasan karakter ini yang dapat menjadi suatu nilai jual akan ekspresi budaya tradisional yang dikembangkan melalui industri kreatif. Industri kreatif memiliki dimensi internasional. Arus pemasaran produk budaya tidak hanya bergerak dalam pasar nasional, tapi juga memasuki pasar internasional. Lebih lanjut, dimensi internasional dari industri kreatif tidak hanya terletak pada arus produk budaya, tapi juga pada daya tarik produk budaya terhadap turis mancanegara.

Pada tahun 2001 dengan melihat hubungan antara kreativitas dan ekonomi, John Howkins[134] melahirkan istilah ekonomi kreatif[135]. Ekonomi kreatif merupakan sektor ekonomi yang menjadikan kreativitas dan keterampilan sebagai modal utamanya. John Howkins membagi kreativitas menjadi dua bentuk yaitu (i) kreativitas yang terkait dengan pencapaian yang diperoleh oleh individu dan merupakan suatu karakter yang ditemukan umum ditemukan dalam kebudayaan serta (ii) kreativitas yang menghasilkan suatu produk.[136] Ekonomi kreatif merupakan sektor ekonomi yang berkembang dengan pesat dan telah menjadi salah satu sektor ekonomi yang memberi sumbangan besar terhadap pemasukan negara. John Howkins memberi estimasi bahwa pada tahun 2000, sebelum konsep ekonomi dicetuskan,

[134] John Howkins adalah seorang konsultan industri kreatif , penulis, dan ahli strategi kebijakan.

[135] Pembahasan terkait ekonomi kreatif dalam skripsi ini adalah pembahasan ekonomi dalam sektor budaya. Pembahasan ekonomi kreatif dalam sektor budaya ditujukan untuk memfokuskan pada batik sebagai produk budaya yang menjadi bagian dalam ekonomi kreatif. Dalam ekonomi kreatif yang dilaksanakan di Indonesia, batik menjadi bagian ekonomi kreatif dalam bidang mode dan kerajinan.

[136] *United Nations* (A), *op.cit.*, hal.9.

ekonomi kreatif memiliki nilai sekitar US$ 2 triliun.[137] Angka tersebut mengalami peningkatan sebesar 5 persen tiap tahunnya.

Ekonomi kreatif merupakan suatu konsep yang masih berkembang. Menurut UNCTAD ekonomi kreatif merupakan ekonomi yang dapat membantu perkembangan peningkatan pendapatan, peningkatan lapangan kerja, dan pendapat dari kegiatan ekspor, yang pada secara bersamaan juga mendorong keragaman budaya, inklusi sosial, dan pembinaan masyarakat.[138] Industri kreatif merupakan inti dari ekonomi kreatif. Melihat, hubungan antara kebudayaan dengan ekonomi, khususnya ekonomi kreatif, UNESCO pada tahun 2005 meresmikan *the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (Konvensi UNESCO 2005)[139] yang mengakui peran industri berbasis budaya dalam perkembangan ekonomi dan budaya baik pada negara maju dan negara berkembang.

Sama halnya dengan industri kreatif, ekonomi kreatif pun memiliki dimensi internasional. Ekonomi kreatif tidak hanya berdampak pada satu negara, tapi ekonomi kreatif juga akan berdampak secara internasional. Dampak ekonomi kreatif secara internasional ini dapat berlaku secara global ataupun hanya berlaku antar beberapa negara. Sebagai contoh adalah industri batik sebagai bagian dari ekonomi kreatif Indonesia.[140] Produksi batik di Indonesia saat ini banyak yang menggunakan pewarna sintetis. Pewarna sintetis yang banyak digunakan di Indonesia adalah pewarna sintetis yang diproduksi oleh Jerman. Oleh karena itu, produksi batik di Indonesia akan mempengaruhi produksi pewarna sintetis di Jerman. Kedua kegiatan produksi ini akan membawa manfaat ekonomi, tidak hanya bagi Indonesia tapi juga untuk Jerman. Hal ini dipertegas melalui pernyataan Duta Besar Jerman untuk Indonesia, Norbert

[137] *Ibid.*

[138] *Ibid.*, hal. 10.

[139] Pembahasan tentang Konvensi UNESCO 2005 akan dipaparkan pada Bab III.

[140] Pembahasan lebih lanjut tentang ekonomi kreatif dalam batik akan dipaparkan pada bagian H. Batik Sebagai Ekonomi Kreatif.

Baas dalam pembukaan pameran Batik Indonesia "Warisan yang Hidup"[141] di Jakarta bahwa batik merupakan ciri khas Indonesia dan memiliki potensi yang besar.

Melihat karakter ekonomi kreatif yang kompleks, maka UNCTAD melihat ekonomi kreatif melalui empat dimensi antara lain (i) dimensi ekonomi, (ii) dimensi sosial, (iii) dimensi budaya, dan (iv) dimensi pembangunan berkelanjutan.[142] Dimensi ekonomi dari ekonomi kreatif berakar pada ekonomi nasional negara. Ekonomi kreatif mengalami perkembangan yang lebih pesat jika dibandingkan dengan perkembangan sektor ekonomi lainnya. Perkembangan ekonomi kreatif ini dapat membantu mendorong perekonomian perkotaan ataupun membangun perekonomian pada wilayah pedesaan. Pembangunan ekonomi kreatif juga dapat mendorong konservasi warisan budaya bangsa. Dalam ruang lingkup internasional, antara tahun 2002-2008 nilai ekspor produk seni kerajinan mengalami pertumbuhan rata-rata sebesar 8,7 persen.[143]

Dimensi sosial dari ekonomi kreatif berhubungan dengan ketenagakerjaan. Melalui ekonomi kreatif masyarakat tradisional akan memperoleh keuntungan. Hal ini dikarenakan ekonomi kreatif membutuhkan tenaga kerja dengan spesifikasi keahlian khusus dan menekankan pada pengetahuan.[144] Melalui pelaksanaan ekonomi kreatif, khususnya melalui industri berbasis budaya, masyarakat tradisional dapat memperoleh penghidupan dari hasil kebudayaan yang dimiliki. Kurangnya penghasilan dan adanya kebutuhan ekonomi banyak mendorong masyarakat tradisional untuk meninggalkan kehidupan sosial budaya untuk melakukan urbanisasi untuk mencari penghasilan ke kota-kota besar. Melalui pengembangan industri berbasis budaya, masyarakat tradisional dapat diberdayakan dalam ruang lingkup

[141] Pameran Batik Indonesia "Warisan yang Hidup" diselenggarakan secara bersama oleh kedutaan besar Jerman Indonesia, Goethe-Institut Jakarta, dan Kamar Dagang dan Industri Jerman dan Indonesia (EKONID). *op.cit.*

[142] *United Nations* (A), *op.cit,* hal. 23.

[143] *Ibid.,* hal. 126.

[144] *Loc.cit.,* hal. 23.

lokal. Artinya, masyarakat tradisional tidak harus meninggalkan kehidupan sosial budaya yang dijalani untuk memperoleh sumber penghasilan.

Dimensi sosial dari ekonomi kreatif juga berhubungan dengan pemberdayaan wanita.[145] Kegiatan produksi seni kerajinan serta mode banyak terfokus pada pekerja wanita. Ekonomi kreatif dapat menjadi pendorong bagi peningkatan taraf hidup masyarakat khususnya wanita. Lebih lanjut, ekonomi kreatif memiliki hubungan timbal balik dengan pendidikan.[146] Melalui pendidikan, dapat dilakukan transmisi pengetahuan tentang keterampilan dan kreativitas yang dibutuhkan untuk mendukung jalannya industri kreatif. Di lain pihak, melalui industri kreatif dapat dikembangkan fasilitas dan sarana yang dibutuhkan dalam pendidikan. Sistem pendidikan ini, khususnya pendidikan budaya dibutuhkan untuk menciptakan masyarakat yang sadar budaya.

Dimensi budaya dari ekonomi kreatif berhubungan dengan nilai budaya dalam produk budaya yang dihasilkan melalui ekonomi kreatif. Melalui ekonomi kreatif, terdapat peningkatan nilai ekonomi dan nilai budaya dalam produk budaya. Peningkatan nilai budaya ini yang kemudian memberi kontribusi bagi masyarakat dan ekonomi.[147] Industri kreatif memiliki peran yang semakin besar dalam melestarikan dan mendorong keragaman budaya dalam era globalisasi. Keragaman budaya dinilai memiliki peran yang penting dalam meningkatkan pembangungan ekonomi, sosial, dan budaya karena budaya merupakan perwujudan dari kreativitas dan aspirasi manusia.[148] Peran budaya dalam pembangunan tersebut tidak hanya berdampak pada negara berkembang tapi juga pada negara maju serta bagi masyarakat internasional secara keseluruhan.

Ekonomi kreatif juga memiliki dimensi pembangunan yang berkelanjutan. Pembangunan berkelanjutan juga mencakup nilai budaya. Nilai budaya yang

[145] *Ibid.,* hal. 24.

[146] *Ibid.*

[147] *Ibid.,* hal. 25.

[148] *Ibid.*

dimaksud baik nilai budaya yang terdapat dalam budaya berwujud ataupun budaya tak berwujud. Hal ini dikarenakan, berkembangnya pandangan bahwa pembangunan tidak hanya bergantung pada pembangunan ekonomi semata tapi juga pada pembangunan dan pemberdayaan budaya. Budaya sebagai modal ekonomi kreatif memiliki keunggulan jika dibandingkan dengan sektor ekonomi lainnya, karena budaya merupakan sumber daya yang dapat diperbaharui. Selain itu, budaya dengan karakternya yang dinamis dapat mengikuti perkembangan selera atau kebutuhan dalam masyarakat. Penekanan pada nilai budaya ini yang kemudian melahirkan anjuran dari dunia internasional agar para pihak, khususnya pelaku dalam industri kreatif untuk fokus terhadap inovasi dan tidak hanya mencari solusi untuk mengurangi biaya produksi.[149]

H. Batik Sebagai Ekonomi Kreatif

Indonesia telah mengembangkan industri dan ekonomi kreatif. Departemen Perdagangan Republik Indonesia pada tahun 2007 memberi definisi atas industri kreatif sebagai:[150]

> "Industri yang berasal dari pemanfaatan kreativitas, ketrampilan, serta bakat individu untuk menciptakan kesejahteraan serta lapangan pekerjaan melalui penciptaan dan pemanfaatan daya kreasi dan daya cipta individu tersebut".

Indonesia membagi industri kreatif ke dalam empat belas subsektor antara lain (i) periklanan, (ii) arsitektur, (iii) pasar barang seni, (iv) kerajinan, (v) desain, (vi) mode, (vii) video, film, dan fotografi, (viii) permainan interaktif, (ix) musik, (x) seni

[149] *Ibid.,* hal. 26. Pengurangan dalam biaya produksi khususnya dalam produksi produk budaya dipandang dapat mengurangi nilai budaya. Nilai budaya dalam produk budaya merupakan daya jual dari produk tersebut. Dengan pengurangan biaya produksi, umumnya produsen akan cenderung melakukan produksi massal produk budaya. Tidak sedikit produksi massal ini kemudian berkembang menjadi suatu imitasi produk budaya dengan teknik pembuatan yang tidak sesuai dengan pakem budaya. Contohnya adalah dengan produksi massal kain dengan motif batik atau yang disebut sebagai batik print, yang pembuatannya tidak dengan proses perintang warna. Sehingga batik print bukanlah sebuah batik, tetapi dipasarkan sebagai batik.

[150] Departemen Perdagangan Republik Indonesia, *Pengembangan Ekonomi Kreatif Indonesia 2025, Rencana Pembangunan Ekonomi Kreatif Indonesia 2009-2015*, (Jakarta: Departemen Perdagangan RI, 2008), hal. 4.

pertunjukan, (xi) penerbitan dan percetakan, (xii) layanan komputer dan piranti lunak, (xiii) televisi dan radio, dan (xiv) riset dan pengembangan.[151] Batik merupakan bagian dari ekonomi kreatif Indonesia yang masuk ke dalam subsektor mode dan kerajinan. Dalam industri kreatif Indonesia pada tahun 2006, subsektor mode dan kerajinan menjadi kontributor terbesar bagi Produk Domestik Bruto (PDB) yaitu masing-masing sebesar 45, 8 triliun rupiah dan 26, 7 triliun rupiah.[152]

Batik telah memiliki peran penting bagi ekonomi kreatif Indonesia sejak beberapa abad yang lalu. Batik sudah menjadi komoditas perdagangan yang diperdagangkan ke luar Pulau Jawa baik antar Pulau di wilayah nusantara ataupun diperdagangkan ke luar wilayah Indonesia. Istilah batik terdapat pada daftar muatan kapal yang membawa barang dagangan dari Jawa ke Sumatera pada abad ke-17. Selanjutnya, Sir Thomas Stamford Raffles, dalam bukunya *The History of Java* memberi pemaparan akan batik dan perannya dalam masyarakat Jawa. Bahwa batik merupakan suatu pakaian kebesaran yang dipakai oleh masyarakat Jawa. Raffles juga memberi penegasan bahwa batik, melalui motif atau ragam hiasnya memiliki suatu peran sebagai penunjuk status sosial pemakaianya dalam masyarakat.[153] Nilai kreatif batik selain terdapat pada teknik pembuatannya, juga terletak pada ragam hias batik. Berdasarkan tulisan Raffless tersebut, dipaparkan bahwa, walaupun terdapat tekstil impor, batik tetap menjadi pilihan utama oleh masyarakat Jawa karena adanya makna budaya yang terkandung dalam sehelai batik.[154]

Batik dapat bertahan dalam ranah ekonomi kreatif Indonesia selama berabad-abad karena karakternya yang dinamis. Bahwa batik telah menunjukkan karakter dinamis ditunjukkan dengan kemampuan batik untuk beradaptasi dalam menghadapi perubahan selera masyarakat dan perkembangan teknologi. Produk budaya sebagai ekonomi kreatif memiliki hubungan yang saling mempengaruhi dengan masyarakat.

[151] *Ibid.*, hal. 6.

[152] *Ibid.*, hal. 9.

[153] Fiona Kerlogue, *"The Role of Batik in The Creative Economy,"* (makalah disampaikan pada World Batik Summit 2011-Indonesia Global Home of Batik, Jakarta 28 September 2011), hal. 71.

[154] *Ibid.*

Dari sudut ragam hias, batik telah berkembang mengikuti perubahan selera masyarakat dari masa ke masa tanpa menghilangkan ciri khas. Bahkan perkembangan ini memperkaya kosa kata ragam hias batik. Contohnya melalui perkembangan motif batik, baik motif batik pedalaman yang dipengaruhi oleh kepercayaan yang dianut oleh masyarakat Jawa; batik Cina, batik Belanda, dan batik Hokokai yang merupakan perwujudan akulturasi budaya Jawa dengan budaya asing; ataupun pada batik Indonesia yang merupakan pernyataan politik Indonesia sebagai negara baru. Perkembangan motif ini pun terus berlangsung sampai masa modern, seperti inovasi yang dilakukan oleh Iwan Tirta dengan menggabungkan unsur kontemporer dan unsur tradisional. Hal tersebut membuktikan bahwa nilai jual batik dalam ekonomi kreatif terletak pada aura kuno yang melekat pada batik. Hal ini kemudian memberi ciri khas unik pada batik jika dibandingkan dengan jenis tekstil lain.

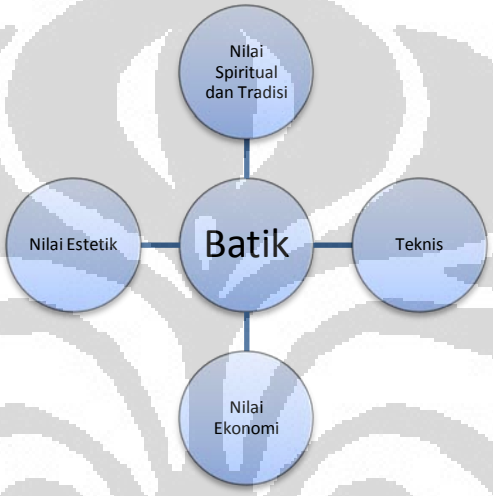
Karakter dinamis batik juga terdapat dalam teknik pembuatan batik. Teknologi merupakan salah satu unsur pendukung ekonomi kreatif. Dalam perjalanan sejarahnya, eksistensi batik juga disebabkan oleh kemampuan adaptasi teknologi pembuatan batik. Perkembangan pembuatan batik menggunakan mesin cap, pada tahun 1840 dilakukan sebagai tanggapan industri batik terhadap meningkatnya permintaan masyarakat akan batik. Selain itu dikembangkannya batik cap juga dilakukan sebagai tanggapan terhadap maraknya persebaran produk imitasi batik yang dihasilkan oleh Inggris, Belanda, dan selanjutnya oleh Jepang. Memasuki abad ke-21 perkembangan teknik pembuatan batik dilakukan dengan dikembangkannya batik fractal. Melalui teknik batik fractal, desain batik dapat dilakukan dengan tahapan yang lebih singkat tanpa menghilangkan proses pemalaman yang merupakan esensi dari batik.

Penggunaan material baru yang dapat mendorong dikembangkanya ragam hias dan fungsi batik juga berperan penting dalam menentukan posisi batik dalam ekonomi kreatif. Seperti yang diungkapkan dalam Batik Summit yang dilaksanakan pada 28 September 2011, penggunaan material wol dan pewarnaan batik dapat dilakukan untuk meningkatkan pasar batik di benua Eropa. Penggunaan material sutra yang telah dilakukan dalam beberapa dekade terakhir juga meningkatkan pasar batik

di dunia internasional. Dalam industri mode, batik menempati tingkatan *high end fashion* atau sebagai adibusana. Hal ini memiliki dampak positif karena terdapat pasar khusus untuk pemasaran batik. Melihat perjalanan batik dalam ekonomi kreatif, maka unsur-unsur dalam batik dapat digambarkan melalui bagan sebagai berikut:

Bagan 1

Unsur-Unsur dalam Batik



Perkembangan batik dalam ekonomi kreatif juga memiliki dampak yang negatif. Seperti yang diungkapkan oleh Iwan Tirta, bahwa komersialisasi batik dapat mengurangi makna budaya yang terkandung di dalam batik.[155] Bahkan dalam kenyataannya hilangnya nilai budaya dalam batik sudah cukup lama terjadi. Namun demikian, hal tersebut bukanlah suatu hambatan untuk mendorong batik menjadi bagian dari ekonomi kreatif Indonesia. Pemerintah memiliki peran yang penting untuk memberi perlindungan batik, baik dari segi hukum[156] dan dengan sistem pendukung industri batik. Hal ini pernah dilakukan oleh pemerintah Belanda pada tahun 1929 dengan membentuk *Batik Research Station* di Yogyakarta.[157]

[155] Tirta (B), *op.cit.*, hal. 9.

[156] Perlindungan hukum terhadap batik akan dipaparkan pada bab III.

[157] Suzanne April Brenner, *The Domestication of Desire: Women Wealth, and Modernity in Java,* (New Jersey: Princeton University Press, 1998), hal. 42.

I. Pemahaman Dalam Konteks Perlindungan Terhadap Warisan Budaya

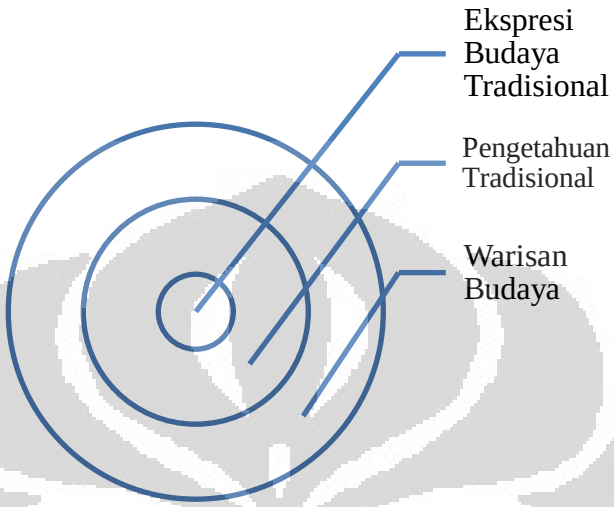
Dalam konteks perlindungan terhadap budaya, khususnya yang dapat dikaitkan dengan batik, terdapat tiga pemahaman yang sering digunakan dalam instrumen hukum internasional dan nasional yaitu pengetahuan tradisional *(traditional knowledge),*[158] ekspresi budaya tradisional *(traditional cultural expressions)*, dan warisan budaya tak berwujud *(intangible cultural heritage)*. Pemahaman ini digunakan dalam perjanjian internasional maupun pembahasan mengenai warisan budaya dalam tingkat internasional oleh organisasi internasional. Jika dilihat dari sudut pandang nilai budaya dan usaha untuk melestarikan keberadaan nilai budaya tersebut, maka pemahaman yang sering digunakan dalam konteks melindungi batik adalah "warisan budaya tak berwujud". Sudut pandang ini digunakan oleh UNESCO. Di lain pihak, batik sebagai suatu produk kekayaan intelektual, dapat dipahami sebagai "pengetahuan tradisional" dan "ekspresi budaya tradisional". Namun demikian, ketiga pemahaman ini bukan suatu hal yang saling terpisah, tapi merupakan tiga pemahaman yang saling berkaitan.

Konsep warisan budaya yang dikembangkan dalam forum internasional terdiri dari warisan budaya berwujud dan warisan budaya tidak berwujud. Pengetahuan tradisional juga merupakan bagian dari warisan budaya. Walaupun warisan budaya tak berwujud dan pengetahuan tradisional yang dibahas dalam forum internasional bukanlah satu hal yang sama, tapi keduanya memiliki persamaan karakter. Persamaan karakter ini terletak pada unsur budaya tak berwujud yang terkandung dalam pengetahuan tradisional di mana unsur budaya tak berwujud dalam pengetahuan tradisional lebih mengarah pada pengetahuan intelektual dari budaya. Selanjutnya, ekspresi budaya tradisional merupakan bagian dari pengetahuan tradisional. Ekspresi budaya tradisional merupakan budaya berwujud yang mengarah pada produk seni budaya. Hubungan dari ketiga sudut pandang ini dapat dilihat melalui bagan sebagai berikut:

[158] Pemahaman pengetahuan tradisional yang menjadi topik pembahasan dalam skripsi ini adalah pengetahuan tradisional yang terkait dengan seni dan bukan pemahaman pengetahuan tradisional dalam pengertian luas yang mencakup pengetahuan akan tanaman dan obat-obatan.

Bagan 2

Hubungan antara Warisan Budaya, Pengetahuan Tradisional, dan Ekspresi Budaya Tradisional



1. Warisan Budaya Tak Berwujud

Warisan budaya merupakan faktor penting dalam kehidupan setiap individu. Warisan budaya memberi jati diri bagi setiap individu dan memberi ikatan emosional antara individu dengan suatu kelompok masyakat. Terminologi warisan budaya telah berkembang dalam beberapa dekade terakhir. Hal ini tidak lepas dari adanya perkembangan dalam instrumen hukum internasional khususnya yang dihasilkan oleh UNESCO. Warisan budaya tidak hanya terfokus pada warisan budaya berwujud seperti benda-benda tradisional dan monumen tradisional, tapi berkembang menjadi tradisi oral, pengetahuan tradisional, dan keahlian untuk menghasilkan suatu kerajinan tangan tradisional. Konsep baru akan warisan budaya ini disebut dengan warisan budaya tak berwujud.

Warisan budaya tak berwujud memiliki hubungan yang erat dengan pengetahuan tradisional dan ekspresi budaya tradisional. Bersama dengan pengetahuan tradisional dan ekspresi budaya tradisional, warisan budaya tak berwujud merupakan sarana untuk mempertahankan keragaman budaya dalam era globalisasi. Nilai dari warisan budaya tak berwujud tidak terletak pada perwujudan dari budaya tersebut, tapi pada pengetahuan dan keahlian yang dimiliki oleh masyarakat tradisional yang diwariskan

dari satu generasi ke generasi selanjutnya.[159] Warisan budaya tak berwujud bergantung pada individu dan masyarakat yang memiliki pengetahuan dan keahlian tradisional. Agar suatu warisan budaya tak berwujud tetap dapat hidup dalam masyarakat, warisan budaya tersebut harus tetap memiliki relevansi dengan suatu masyarakat dan dilaksanakan secara rutin oleh masyarakat serta dipelajari oleh anggota dari masyarakat tersebut dan diwariskan pada generasi selanjutnya. Agar suatu nilai budaya dapat diidentifikasikan sebagai suatu warisan budaya tak berwujud, diperlukan peran dari masyarakat tradisional. Peran masyarakat tradisional di sini adalah untuk menentukan nilai budaya mana yang merupakan bagian penting dari budaya mereka yang dapat diidentifikasikan sebagai suatu warisan budaya tak berwujud. Berdasarkan Konvensi UNESCO 2003, warisan budaya tak berwujud adalah kebiasaan atau adat, ekspresi budaya, serta pengetahuan dan keahlian yang diakui oleh masyarakat, kelompok masyarakat, ataupun individu sebagai bagian dari warisan budaya mereka.[160] Selanjutnya, yang dapat disebut sebagai warisan budaya tak berwujud adalah warisan budaya yang:[161]

1. Tradisional, kontemporer atau modern, dan budaya yang hidup

   Warisan budaya tak berwujud mewakili budaya yang diturunkan dari generasi sebelumnya dan juga budaya modern yang dijalankan oleh masyarakat tradisional.

2. Inklusif

   Warisan budaya tak berwujud merupakan budaya yang diwariskan antargenerasi dan telah berkembang sebagai reaksi dari lingkungan di mana

[159] "UNESCO (B), *op.cit.*

[160] Definisi atas warisan budaya tak berwujud ini, dipaparkan dalam Pasal 2 paragraf 1 ICHC. Pasal 2 paragraf 1 ICHC berbunyi:

"*The 'intangible cultural heritage' means the practices, representations, expressions, knowlede, skill as well as the instruments, objects, artefacts and cultural spaces associated therewith that communities, groups, and in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provide them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity...*".

[161] UNESCO (B), *op.cit.*

warisan budaya tersebut berada. Warisan budaya berkontribusi dalam memberi masyarakat sebuah jati diri dan sebagai penghubung antara masyarakat dengan nenek moyangnya, dengan masa kini, dan menghantar masyarakat pada masa depan masyarakat tersebut. Warisan budaya tak berwujud mendorong rasa tanggung jawab setiap individu kepada masyarakat di mana ia berasal dan memberi identitas terhadap individu sebagai anggota dari suatu masyarakat atau bangsa.

3. Suatu bentuk perwakilan terhadap masyarakat tradisional

   Warisan budaya tak berwujud berkembang pada akarnya dalam suatu lingkungan masyarakat tradisional. Selain itu warisan budaya tak berwujud bergantung pada masyarakat tradisional yang memiliki pengetahuan tradisional, keahlian, dan adat yang akan mewariskan budaya tersebut pada generasi selanjutnya.

4. Berbasis masyarakat

   Warisan budaya tak berwujud hanya dapat disebut sebagai suatu warisan budaya jika diakui oleh masyarakat, kelompok masyarakat, atau individu yang menciptakan, menjaga, dan mewariskan budaya tersebut. Tanpa adanya pengakuan tersebut nilai budaya tidak dapat diakui sebagai suatu warisan budaya tak berwujud.

2. Pengetahuan Tradisional

Pengetahuan tradisional adalah pengetahuan yang dimiliki oleh masyarakat daerah atau tradisi yang sifatnya turun-temurun. Pengetahuan tradisional dapat meliputi bidang seni, tanaman, arsitektur, dan lain sebagainya.[162] Pemahaman pengetahuan oleh WIPO digunakan dalam dua pengertian pokok, yang pertama terminologi pengetahuan tradisional dalam pengertian sempit yang didefinisikan sebagai kegiatan intelektual dan pandangan dalam konteks tradisional yang meliputi pengetahuan, keterampilan, pembelajaran, dan pelatihan yang membentuk satu

[162] Budi Agus Riswandi dan M. Syamsudin. *Hak Kekayaan Intelektual dan Budaya Hukum.* (Jakarta: PT Raja Grafindo Persada, 2004), hal. 29.

kesatuan pengetahuan tradisional; dan pengetahuan yang terkandung dalam gaya hidup tradisional dari suatu masyarakat, atau suatu pengetahuan yang terkodifikasi dalam sistem pengetahuan yang diwariskan dari generasi ke generasi.[163] Pengetahuan tradisional ini tidak hanya terbatas pada suatu bidang, dan dapat mencakup bidang pertanian, lingkungan, pengetahuan terkait dengan obat-obatan, dan sumber daya genetik.[164]

Pemahaman kedua akan pengetahuan tradisional adalah terminologi pengetahuan tradisional dalam pengertian luas yang umum digunakan oleh WIPO dalam *fact-finding mission* pada tahun 1998-1999. Dalam pengertian luas, terminologi pengetahuan tradisional mengacu pada karya sastra, karya seni dan karya ilmiah, penemuan ilmiah, pola, tanda, nama dan simbol, informasi yang dirahasiakan yang berdasarkan budaya, serta inovasi dan kreasi lain yang berdasarkan suatu tradisi dan budaya yang merupakan hasil dari tindakan intelektual dalam bidang industri, ilmiah, kesastraan, dan kesenian.[165] Pengertian luas dari pengetahuan tradisional ini, menurut Carlos M. Correa mencakup keterangan akan karakter fungsional dan karakter keindahan, yaitu proses dan produk yang dapat digunakan pada pertanian dan industri dan memiliki nilai budaya tak berwujud.[166] Tidak jauh berbeda dari WIPO, Direktur Jenderal UNESCO memberi definisi pengetahuan tradisional sebagai:[167]

> "*The indigenous people of the world possess an immense knowledge of their environments, based on centuries of living close to nature. Living in and from the richness and variety of complex ecosystems, they have an understanding of the properties of plants and animals, the functioning of ecosystems and the techniques for using and managing them that is particular and often detailed. In rural communities in developing*

[163] WIPO (B). *WIPO Summer School Reading Material*. 2008. hal. 134.

[164] *Ibid.*

[165] *Ibid.* hal. 135.

[166] Carlos M. Correa, "Traditional Knowledge and Intellectual Property: Issues and Options surrounding the protection of Traditional Knowledge", hal. 4.

[167] Patricia A L Cochran, "What is Traditional Knowledge?" http://www.nativescience.org/html/traditional_knowledge.html., diakses 2 Mei 2010.

countries, locally occuring species are relied on for many-sometimes for all- foods, medicines, fuel, building materials and other products. Equally, people is knowledge and perceptions of the environment, and their relationships with it, are often important elements of cultural identity.

Bagi sebagian besar masyarakat, pengetahuan tradisional merupakan fondasi kehidupan masyarakat. Pengetahuan tradisional menekankan pada pengetahuan untuk melakukan sesuatu yang dimiliki oleh masyarakat lokal suatu bangsa yang diciptakan pada masa lalu. Yang membuat suatu pengetahuan dikatakan sebagai pengetahuan tradisional bukanlah unsur kuno dari pengetahuan tersebut, tapi pengetahuan yang memiliki hubungan tradisional dengan suatu masyarakat; suatu pengetahuan yang berkembang, dipelihara, dan diwariskan antargenerasi.[168] Pengetahuan tradisional dipandang sebagai bagian dari identitas budaya suatu bangsa, maka terdapat suatu hubungan antara bangsa dengan pengetahuan masyarakat bangsa tersebut. Hubungan inilah yang menyebabkan suatu pengetahuan masyarakat termasuk sebagai suatu pengetahuan tradisional. Pengetahuan tradisional ini secara konstan diciptakan kembali dalam masyarakat dan turut berkembang dengan individu dan masyarakat yang menanggapi tantangan yang timbul dari lingkungan sosial.[169]

Perkembangan pengetahuan tradisional, yang dapat disebabkan oleh adanya pembaharuan dan/atau proses adaptasi dari perubahan lingkungan, menunjukkan bahwa pengetahuan tradisional yang dimiliki oleh masyarakat tradisional bukanlah suatu hal yang statis. Pengetahuan tradisional bervariasi secara signifikan terutama dalam hal bentuk ekspresi pengetahuan tradisional tersebut.[170] Beberapa bentuk pengetahuan tradisional terkodifikasi dalam wujud yang formal seperti corak dari tekstil tradisional.[171] Pengetahuan ini dapat diasosiasikan dengan ekspresi budaya

[168] "WIPO(C), *"Intellectual Property And Traditional Knowledge"*, http://www.wipo.int/freepublications/en/tk/920/wipo_pub_920.pdf, diunduh pada 29 Maret 2010.

[169] *Ibid.*

[170] Correa, *op. cit.*,

[171] *Ibid.*

tradisional seperti lagu daerah, cerita rakyat, motif, dan pola. Dalam hal batik, maka dapat diklasifikasikan sebagai pengetahuan tradisional dan ekspresi budaya tradisional. Hal ini disebabkan pengetahuan untuk membuat batik merupakan suatu pengetahuan tradisional dan batik sebagai suatu kerajinan tangan merupakan ekspresi budaya tradisional. Hal ini menunjukkan bahwa ekspresi budaya tradisional merupakan bagian dari pengetahuan tradisional.

3. Ekspresi Budaya Tradisional

Pada umumnya, ekspresi budaya tradisional dapat diklasifikasikan sebagai budaya yang (i) diwariskan dari generasi ke generasi baik secara lisan atau melalui tindakan, (ii) merefleksikan identitas budaya dan identitas sosial suku bangsa, (iii) mengandung elemen yang menunjukkan karakter dari suku bangsa, (iv) tidak diketahui penciptanya,[172] (v) seringkali tidak diciptakan untuk tujuan komersial tapi sebagai sarana religius dan budaya, dan (vi) selalu berkembang dan diciptakan secara terus-menerus oleh masyarakat.[173] Sebagai bagian dari pengetahuan tradisional, maka ekspresi budaya tradisional memiliki karakter yang tidak jauh berbeda dari pengetahuan tradisional.

Ekspresi budaya tradisional merupakan produk antargenerasi dan merupakan proses kreatif dari masyarakat yang merefleksikan sejarah, budaya, nilai, dan identitas sosial bangsa.[174] Ekspresi budaya tradisional selain berada sebagai inti dari identitas masyarakat juga merupakan budaya yang hidup, artinya ekpsresi budaya tradisional secara terus-menerus diciptakan kembali dan memperoleh pengembangan unsur baru yang dihasilkan dari perspektif artis dan masyarakat. Tradisi dalam ekspresi budaya tradisional tidak hanya merupakan proses tiruan dan reproduksi tapi tradisi

[172] Pencipta dari ekspresi budaya dapat diklasifikasikan sebagai seluruh kesatuan masyarakat atau individu anggota dari masyarakat tersebut yang memiliki kewajiban, hak, dan tanggung jawab untuk menciptakan ekspresi budaya.

[173] WIPO (A), *op.cit.*

[174] *Ibid.*

merupakan inovasi dan kreasi baru dalam ruang lingkup tradisional.[175] Oleh karena itu kreativitas tradisional ditandai oleh hubungan dinamis antara kreatif individu dan kolektif dalam masyarakat.[176] Belum terdapat suatu definisi formal akan ekspresi budaya tradisional. Namun, ekspresi budaya tradisional dapat didefinisikan sebagai suatu produksi yang mengandung karakter dari nilai seni tradisional yang dikembangkan dan dipertahankan oleh masyarakat dari suatu bangsa atau oleh individu dari masyarakat tersebut yang merefleksikan ciri seni tradisional dari masyarakat tersebut.[177] Yang dapat diklasifikasikan sebagai ekspresi budaya tradisional antara lain:[178]

1. Ekspresi verbal

   Yang termasuk sebagai ekspresi verbal di antaranya adalah cerita rakyat, puisi rakyat dan teka-teki, lambang, dan pola.
2. Ekspresi musikal

   Yang termasuk sebagai ekspresi musikal di antaranya adalah lagu daerah dan instrumen musik.
3. Ekspresi tradisional berupa tindakan

   Yang dimaksud sebagai ekspresi tradisional berupa tindakan di antaranya adalah tarian tradisional, pertunjukkan, dan ritual tradisional.
4. Ekspresi berwujud

   Yang dimaksud sebagai ekspresi berwujud di antaranya adalah (i) hasil produksi seni tradisional seperti lukisan, ukiran, patung tradisional, barang tembikar, seni tradisional yang terbuat dari tanah liat, mosaik, seni tradisional yang terbuat dari kayu dan logam, perhiasan tradisional, pakaian tradisional, hasil sulaman, tekstil, dan karpet; (ii) kerajinan tangan; (iii) alat musik tradisional; dan (iv) arsitektur tradisional.

[175] *Ibid.*

[176] *Ibid.*

[177] *Ibid.,*

[178] *Ibid.*

Ekspresi budaya tradisional dapat berupa budaya berwujud dan budaya tak berwujud ataupun perpaduan dari keduanya. Contoh dari ekspresi budaya tradisional yang merupakan perpaduan antara budaya berwujud dan budaya tak berwujud adalah batik. Wujud batik sebagai sehelai kain merupakan ekspresi budaya tradisional yang berupa sebuah benda berwujud. Namun, motif yang tertuang pada sehelai batik adalah ekspresi dari kepercayaan tradisional yang merupakan ekspresi budaya tak berwujud dari masyarakat Jawa.

J. Perkembangan Batik Dalam Dunia Internasional

Pergerakan batik sebagai budaya menimbulkan adanya kebutuhan untuk memberi perlindungan hukum terhadap batik Jawa. Bahwa batik Jawa sebagai wujud budaya yang dinamis akan memerlukan suatu perlindungan hukum dari sudut pandang budaya, perdagangan, dan kekayaan intelektual. Memasuki era globalisasi maka untuk mempertahankan nilai tradisional batik perlu suatu perlindungan hukum yang memberi suatu jaminan akan pelestarian batik. Bahwa dengan pesatnya perkembangan teknologi, diperlukan upaya untuk melestarikan proses pewarisan batik sebagai budaya masyarakat Jawa kepada generasi muda. Hal ini diperlukan agar batik Jawa tetap dapat mempertahankan nilainya sebagai bagian integral dalam kehidupan masyarakat Jawa di tengah budaya asing yang semakin marak di kalangan generasi muda. Pelestarian terhadap batik ini juga diperlukan untuk melindungi teknik pembuatan batik secara tradisional yaitu melalui proses pemalaman. Selanjutnya, perlindungan hukum terhadap batik diperlukan untuk mempertahankan nilai moral masyarakat Jawa terhadap karya budayanya dari tindakan penyalahgunaan batik oleh pihak ketiga. Perlindungan hukum pun ditujukan untuk memberi landasan bagi masyarakat Jawa untuk mengoptimalkan manfaat ekonomi yang terdapat dalam batik Jawa untuk membantu meningkatkan perekonomian masyarakat tanpa adanya penyimpangan budaya.

BAB III

PENGATURAN BATIK DALAM HUKUM INTERNASIONAL DAN HUKUM NASIONAL

A. Latar Belakang Perlunya Perlindungan Hukum Terhadap Warisan Budaya

Perlindungan hukum terhadap warisan budaya merupakan hal yang telah cukup lama diperjuangkan oleh negara-negara dalam dunia internasional. Perjuangan untuk memberi perlindungan hukum bagi warisan budaya mulai bergema sejak tahun 1960-an. Perjuangan ini khususnya banyak disuarakan oleh negara berkembang. Negara berkembang, pada umumnya merupakan negara yang kaya akan warisan budaya di mana warisan budaya tersebut merupakan suatu nilai yang hidup dan berkembang sehingga memiliki peran penting dalam kehidupan bangsa. Salah satu pemicu keinginan untuk melindungi warisan budaya ini dilatarbelakangi oleh semakin besarnya pengaruh negatif globalisasi[179] terhadap warisan budaya. Globalisasi menggeser nilai budaya pada masyarakat, khususnya masyarakat tradisional, di berbagai negara yang mengakibatkan menurunnya nilai budaya. Penurunan nilai budaya ini salah satunya dipicu oleh adanya pergeseran kiblat budaya yang terjadi akibat terbukanya jaringan informasi sebagai dampak negatif globalisasi. Pergeseran kiblat nilai budaya di antaranya dapat terwujud melalui menurunnya minat generasi muda bangsa akan kebudayaan bangsanya dan berkurangnya kemurnian dari suatu budaya. Oleh karena itu upaya pelestarian budaya salah satunya ditujukan untuk menjaga agar warisan budaya tidak hilang dengan mengutamakan pada proses pewarisan budaya.

[179] Globalisasi selain memberi dampak negatif bagi warisan budaya juga memiliki dampak positif yang dapat membantu upaya untuk melestarikan warisan budaya. Dampak positif dari globalisasi menurut pendapat Koichiro Matsuura, Mantan Direktur Jenderal UNESCO, adalah semakin terbukanya kesempatan untuk melakukan dialog dan pertukaran informasi antar negara. Selain itu melalui globalisasi penyebaran informasi untuk meningkatkan kesadaran masyarakat akan warisan budaya yang dimilikinya semakin mudah dilaksanakan. Hal ini kemudian membantu dalam upaya pelestarian seperti pencatatan dan dokumentasi budaya.

Globalisasi juga dipandang dapat menimbulkan adanya tindakan eksploitasi terhadap produk budaya, terutama eksploitasi secara ekonomi. Selain perannya dalam kehidupan sosial dan spiritual suatu bangsa, warisan budaya memiliki nilai ekonomi yang tinggi. Melalui warisan budaya yang dimiliki oleh suatu masyarakat, dapat dihasilkan produk kesenian ataupun teknologi yang memiliki nilai ekonomi. Produk kesenian dapat berupa produk kesenian yang dihasilkan oleh masyarakat pendukung suatu budaya tersebut ataupun produk yang diciptakan karena terinspirasi dari warisan budaya suatu bangsa. Namun, manfaat ekonomi dari warisan budaya ini belum banyak dinikmati oleh masyarakat lokal, tapi oleh pihak di luar masyarakat tersebut. Eksploitasi ekonomi yang terjadi adalah penggunaan pengetahuan tradisional atau produk seni tradisional sebagai komoditas perdagangan secara besar-besaran tanpa ada kontribusi kepada masyarakat lokal. Selain itu, eksploitasi ekonomi dapat berupa tindakan tiruan dari produk budaya yang secara langsung ataupun tidak langsung dapat merugikan masyarakat lokal penghasil budaya tersebut. Dalam bidang seni, penggunaan bahan tradisional sebagai bahan dasar kreativitas seni kontemporer dapat memberi sumbangan yang besar bagi perkembangan ekonomi masyarakat tradisional suatu bangsa. Tidak sedikit produk seni budaya yang menjadi inspirasi dalam industri hiburan, mode, kerajinan, penerbitan, dan desain.[180] Saat ini, dalam dunia bisnis di negara maju ataupun berkembang keuntungan diperoleh dengan memproduksi barang yang menggunakan bahan dasar yang berasal dari produk budaya.[181] Manfaat ekonomi dari produk budaya ini terutama semakin dinilai penting dengan berkembangnya ekonomi kreatif di berbagai negara. Lebih lanjut, ekonomi kreatif merupakan salah satu sektor ekonomi yang menyumbangkan penghasilan yang signifikan bagi perekonomian negara. Jika dilindungi, masyarakat lokal dapat mengembangkan taraf ekonominya melalui produk budaya yang mereka hasilkan. Perkembangan ekonomi ini dapat dilakukan melalui pengembangan perusahaan

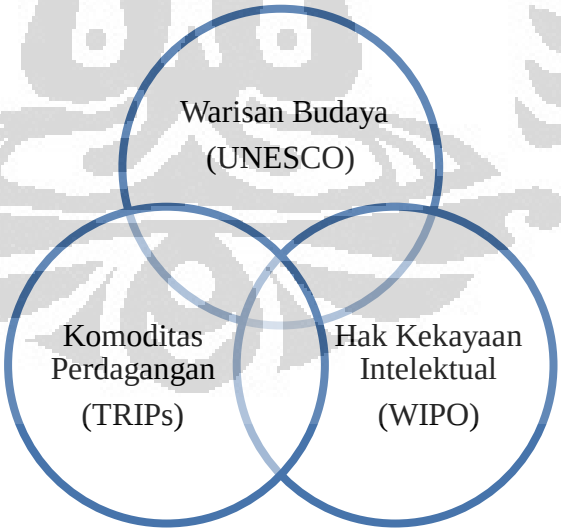
[180] WIPO (B), *Intellectual Property And Traditional Cultural Expressions/Folklore,*WIPO Publication No. 913(E). hal. 7.

[181] *Ibid.*

rakyat, menciptakan lapangan kerja bagi penduduk lokal, pengembangan keahlian penduduk lokal, serta pengembangan wisata.[182] Oleh karena itu, upaya perlindungan terhadap warisan budaya tidak lepas dari upaya perlindungan melalui ranah kekayaan intelektual. Perlindungan hukum terhadap kekayaan intelektual atas produk budaya dapat memberi perlindungan moral bagi masyarakat tradisional agar mendapat pengakuan atas budaya yang dihasilkan. Selain perlindungan moral, perlindungan melalui hak kekayaan intelektual dapat memberi perlindungan ekonomi jika masyarakat tradisional memutuskan untuk memasarkan produk budayanya secara komersial. Lebih lanjut, perlindungan ekonomi dapat memberi perlindungan bagi masyarakat tradisional dari pihak ketiga yang mengeksploitasi hasil budaya seni dari masyarakat tradisional. Hubungan warisan budaya, hak kekayaan intelektual, dan perdagangan serta instrumen hukum internasional yang melindunginya dapat dilihat sebagai berikut:

Bagan 3

Hubungan Instrumen Hukum Internasional yang Melindungi Warisan Budaya (UNESCO), Komoditas Perdagangan (TRIPs), dan Hak Kekayaan Intelektual (WIPO)



[182] *Ibid.*

Perlindungan terhadap budaya dalam perkembangannya terfokus pada (i) perlindungan terhadap budaya sebagai upaya untuk mempertahankan eksistensi budaya tersebut, (ii) perlindungan dari tindakan eksploitasi terhadap warisan budaya, dan (iii) upaya untuk mengembangkan suatu cabang ilmu hukum baru bagi perlindungan terhadap warisan budaya. Ketiga arah perkembangan terhadap warisan budaya ini dilakukan tanpa membekukan budaya dan memberi kekangan terhadap budaya untuk berkembang. Indonesia sebagai negara yang kaya akan warisan budaya memiliki kepentingan yang besar dalam upaya perlindungan hukum secara internasional terhadap warisan budaya, baik dalam upaya pelestarian maupun perlindungan terkait dengan kekayaan intelektual dan komoditas perdagangan. Batik[183] merupakan salah satu warisan budaya Indonesia yang telah masuk ke dalam ranah perlindungan warisan budaya secara internasional. Sebagai warisan budaya, batik memiliki peran yang sangat penting dalam kehidupan masyarakat Indonesia khususnya bagi masyarakat Jawa. Namun, batik tidak terlepas dari pengaruh negatif globalisasi seperti pergeseran nilai terhadap batik dan semakin maraknya produk tiruan batik. Di lain pihak, Indonesia memiliki kepentingan untuk mengupayakan perlindungan terhadap warisan budaya khususnya terhadap batik karena adanya suatu fenomena perdagangan batik yang semakin memasuki ranah internasional terutama dengan peran batik dalam ekonomi kreatif.

B. Segi-Segi Hukum Perdata Internasional Dalam Perlindungan Hukum Untuk Batik

Perlindungan terhadap batik Jawa dalam hukum perdata internasional timbul akibat adanya unsur asing dalam suatu hubungan hukum. Semakin internasionalnya perdagangan dan produksi batik mengakibatkan semakin beragamnya latar tradisi

[183] Batik yang dilindungi melalui instrumen hukum internasional adalah batik yang dibuat dengan teknik pemalaman antara lain batik tulis, batik cap, dan batik kombinasi tulis dan cap. Hal ini untuk membedakan dengan batik printing yang tidak termasuk sebagai batik tapi merupakan kain dengan motif batik.

budaya perajin batik.[184] Lebih lanjut, dengan dimasukkannya batik sebagai salah satu bagian dari ekonomi kreatif Indonesia, maka perdagangan internasional batik akan semakin ditingkatkan. Hal ini kemudian akan menimbulkan bertemunya berbagai sistem hukum dalam perdagangan internasional batik. Pertemuan sistem hukum tersebut dapat menimbulkan perbedaan pemahaman akan perlindungan terhadap batik. Sebagai suatu produk budaya, batik memiliki karakter yang berbeda dibandingkan dengan komoditas perdagangan lainnya.

Perlindungan hukum yang efektif dapat diberikan jika terdapat persamaan pemahaman akan suatu konsep hukum. Hal ini yang kemudian membutuhkan adanya peran hukum perdata internasional untuk memberi perlindungan yang efektif terhadap batik khususnya dalam ruang lingkup perdagangan internasional. Hukum perdata internasional memiliki peran untuk memberi sarana perlindungan hukum terhadap batik dalam memasuki dunia internasional dengan menunjuk sistem hukum yang berlaku terhadap batik. Untuk dapat menentukan hukum mana yang berlaku dalam perlindungan terhadap batik, maka perlu diketahui antara lain titik pertalian primer yang menentukan titik taut yang menentukan perlindungan batik merupakan bagian dari ranah hukum perdata internasional. Hal selanjutnya yang perlu dilakukan adalah menentukan hukum mana yang berlaku dalam perlindungan terhadap batik sehingga dapat dilakukan perlindungan yang efektif. Penentuan hukum yang berlaku dapat dilakukan melalui pendekatan beberapa prinsip hukum perdata internasional yaitu (i) *locus regit actum* (ii) prinsip kualifikasi (iii) prinsip hak-hak yang telah diperoleh, (iv) *comity doctrine*, (v) prinsip timbal balik, dan (vi) prinsip ketertiban umum.

[184] Yang dimaksud dengan keragaman latar tradisi budaya perajin batik adalah bahwa dalam perkembangannya batik tidak hanya diproduksi oleh masyarakat Jawa ataupun Indonesia. Batik telah banyak diproduksi oleh masyarakat dari luar Indonesia yang memperoleh pengaruh dari Indonesia, seperti Jerman, Belanda, Afrika, Rusia, Agorigin-Australia, dan sebagainya. Warga asing tersebut kemudian mengembangkan batik sehingga tidak sedikit yang berkembang menjadi suatu karya seni seperti lukisan. Perbedaan tujuan pembatikan ini yang kemudian menimbulkan keragaman latar budaya tradisi, karena batik yang diproduksi di Jawa memiliki karakter komunal sedangkan batik karya seniman dari luar negeri ada yang berupa karya individu semata.

1. Titik Pertalian Primer

Titik pertalian primer adalah faktor-faktor dan keadaan-keadaan yang menciptakan hubungan hukum perdata internasional. Hubungan perdata internasional timbul akibat adanya unsur asing dalam suatu peristiwa. Dalam konteks perlindungan batik sebagai warisan budaya yang menjadi komoditas perdagangan dalam dunia internasional, maka yang menjadi titik pertalian primer adalah adanya sistem hukum yang berlaku melintasi batas negara dan batik yang menjadi objek dalam peristiwa hukum perdata internasional. Perdagangan batik yang berada pada tahap internasional menimbulkan hubungan perdata internasional. Adapun yang menjadi titik pertalian primer dalam rangka hubungan perdagangan internasional, khususnya mengenai perdagangan batik dalam ranah internasional adalah:

1. *Lex Rei Sitae*

   Titik pertalian primer timbul karena adanya peristiwa perdagangan batik yang melintasi batas negara. Perdagangan batik yang semakin internasional mengakibatkan bertemunya dua atau lebih stelsel hukum. Sebagai warisan budaya yang berkembang menjadi komoditas perdagangan, batik membutuhkan suatu perlindungan hukum. Perlindungan hukum terhadap batik diwujudkan melalui ruang lingkup hukum kekayaan intelektual. Kekayaan intelektual yang terdapat pada batik, memiliki ikatan yang kuat dengan suatu wilayah dan masyarakat pada wilayah tersebut. Ikatan tersebut tidak hanya merupakan ikatan kultural tapi juga berupa ikatan ekonomi.[185] Oleh karena itu *lex rei sitae*, yang melihat lokasi keberadaan benda sebagai penentu hukum yang berlaku terhadap benda tersebut, merupakan titik pertalian primer yang berlaku dalam perdagangan internasional batik. Dalam hukum perdata Indonesia *lex rei sitae* diatur dalam Pasal 17 AB di mana dinyatakan bahwa hukum yang berlaku terhadap benda bergerak didasarkan pada hukum dari

[185] Bram Akkermans dan Eveline Ramaekers, *"Lex Rei Sitae In Perspective: National Developments Of A Common Rule?"*(makalah merupakan bagian dari *Working Paper No. 2012/14* Maastricht European Private Law Institute, Maastricht, Mei 2012), hal. 4.

tempat benda bergerak tersebut terletak.[186] Berdasar *lex rei sitae* maka hukum yang berlaku dalam perdagangan internasional batik adalah hukum Indonesia karena perlindungan hukum terhadap batik melalui hak cipta dan batikmark didaftarkan di Indonesia

2. Titik Pertalian Sekunder

a. *Locus Regit Actum*

Locus Regit Actum merupakan asas yang menyatakan bahwa tempat di mana suatu perbuatan hukum berlangsung akan menentukan hukum yang berlaku terhadap perbuatan hukum tersebut. Asas *locus regit actum* memberi penekanan kepada wilayah sebagai penentu berlakunya suatu sistem hukum. Berdasar asas ini, warga asing yang berada di wilayah suatu negara tetap tunduk kepada wilayah negara tersebut. Teritorialitas berperan sebagai titik pertalian sekunder memiliki kaitan dengan perlindungan kekayaan intelektual terhadap batik. Hak kekayaan intelektual memiliki prinsip teritorial. Berdasarkan prinsip *national treatment* yang terdapat dalam Pasal 5 (1) Konvensi Bern[187] terdapat implikasi bahwa kekayaan intelektual menganut prinsip teritorial. Hal tersebut sehingga dapat disimpulkan adanya suatu pilihan hukum. Pilihan hukum ini menunjuk pada hukum negara di mana perlindungan kekayaan intelektual diberikan. Adanya indikasi pilihan hukum yang menganut prinsip teritorial ini ditegaskan dalam Pasal 5 (2) Konvensi Bern. Adanya pilihan hukum tersebut yang menjadikan bahwa perlindungan hukum kekayaan intelektual terhadap batik merupakan bagian dari ranah hukum perdata internasional. Bahwa batik telah memperoleh perlindungan hukum melalui Undang-Undang No. 19 Tahun 2002 tentang hak cipta menunjukkan bahwa berdasar Konvensi Bern, telah dilakukan pilihan hukum Indonesia sebagai hukum yang berlaku atas perlindungan batik.

[186] Sudargo Gautama (B), *Hukum Perdata Internasional Indonesia Buku Ketujuh*, (Bandung: P.T. Alumni, 2004), hal. 497.

[187] Pembahasan lebih lanjut tentang Konvensi Bern akan dipaparkan pada halaman 126.

b. Kualifikasi

Kualifikasi adalah memasukkan fakta sehari-hari ke dalam pengertian hukum yang sudah tersedia.[188] Dalam permasalahan hukum perdata internasional, kualifikasi merupakan tahap pertama yang harus dilakukan untuk mengindentifikasi permasalahan hukum perdata internasional tersebut. Fakta-fakta dari suatu permasalahan hukum perdata internasional serta kaidah hukum yang ada terlebih dahulu diklasifikasikan dan dimasukkan ke dalam pengertian hukum yang tersedia. Dalam ruang lingkup hukum perdata internasional, kualifikasi dibutuhkan karena dalam suatu persoalan hukum perdata internasional terkandung unsur asing, seperti hukum asing, yang terkadang memiliki kualifikasi yang berbeda dari hukum nasional. Kualifikasi hukum asing yang berbeda dari hukum nasional ini, dapat memiliki pengertian yang berbeda walaupun istilah hukum yang digunakan sama. Setelah kualifikasi akan persoalan hukum perdata internasional maka dapat ditentukan hukum manakah yang berlaku.

Pokok permasalahan dari kualifikasi adalah menentukan sistem hukum yang digunakan untuk memberi pengertian bagi persoalan hukum perdata internasional. Untuk memberi pengertian tersebut, kualifikasi dibagi menjadi tiga yaitu (i) kualifikasi menurut *lex fori*, (ii) kualifikasi menurut *lex cause*, dan (iii) kualifikasi secara otonom.[189] Kualifikasi menurut *lex fori* menginginkan agar kualifikasi dilakukan menurut sistem hukum dari negara sang Hakim sendiri. Kelompok yang pro terhadap pendirian kualifikasi ini, kualifikasi menurut *lex fori* merupakan suatu keharusan yang logis.[190] Kualifikasi menurut *lex fori* dapat dibagi menjadi kualifikasi primer dan kualifikasi sekunder.[191] Kualifikasi primer adalah kualifikasi yang diperlukan untuk dapat menentukan hukum mana yang berlaku. Kualifikasi sekunder

[188] Sudargo Gautama(C), *Hukum Perdata Internasional Indonesia Buku Ketiga,* (Bandung: Eresco, 1988), hal. 166.

[189] *Ibid.*, hal. 182.

[190] *Ibid.*, hal. 183.

[191] *Ibid.*, hal. 207.

adalah kualifikasi lebih jauh menurut hukum yang sudah ditemukan. Selanjutnya, Kualifikasi menurut *lex cause* adalah kualifikasi berdasar hukum yang diberlakukan. Sedangkan, kualifikasi secara otonom adalah kualifikasi harus dilakukan secara otonom tanpa harus mengacu kepada suatu sistem tertentu seperti pada kualifikasi menurut *lex fori* dan kualifikasi menurut *lex cause*. Kualifikasi secara otonom mengedepankan metode perbandingan hukum.[192] Sudargo Gautama menyatakan bahwa kualifikasi yang sebaiknya dianut oleh Indonesia adalah kualifikasi menurut *lex fori* dengan pertimbangan jika terjadi suatu permasalahan hukum perdata internasional, maka Hakim Indonesia dapat menggunakan hukumnya sendiri yaitu hukum Indonesia.[193]

Dalam kaitannya dengan perlindungan hukum akan batik, berdasar kualifikasi primer, maka kualifikasi dilakukan berdasar hukum Indonesia. Selanjutnya berdasar kualifikasi sekunder kualifikasi perlindungan hukum akan batik dilakukan berdasar hukum Indonesia sebagai hukum yang berlaku. Melalui kualifikasi maka yang dapat diklasifikasikan sebagai:

1. Perlindungan

   Kualifikasi terhadap perlindungan efektif yang dapat diterapkan kepada batik dilihat dari sudut pandang para pakar batik. Menurut pendapat Oedharjo Diran[194], perlindungan hukum yang tepat untuk melindungi batik Jawa adalah perlindungan yang mencakup di antaranya (i) pelestarian falsafah Jawa yang tertuang dalam motif batik Jawa, khususnya motif Jawa klasik atau pedalaman; (ii) memberi kesempatan untuk dilakukannya inovasi terhadap batik Jawa tanpa menghilangkan motif utama[195] yang terdapat dalam batik

[192] *Ibid.,* hal. 193.

[193] *Ibid.,* hal. 211.

[194] Hasil wawancara dengan Oedharjo Diran seorang pakar batik yang tergabung dalam yayasan batik dan aktif dalam upaya pelestarian batik. Wawancara dilakukan pada 7 November 2010.

[195] Dalam batik Jawa klasik terdapat perpaduan beberapa motif utama yang mengandung falsafah masyarakat Jawa. Perpaduan motif ini tidak dapat saling dipisahkan karena dapat mengurangi makna yang terkandung dalam batik. Oleh karena itu, inovasi terhadap batik dapat dilakukan

Jawa klasik; (iii) perlindungan yang memperhatikan hak moral masyarakat Indonesia khususnya masyarakat Jawa akan batik. Hak moral ini terkait dengan pencegahan klaim dan penyalahgunaan batik oleh warga negara asing terhadap batik; dan (iv) perlindungan hukum yang mewajibkan dilakukannya permohonan izin bagi warga negara asing yang akan memproduksi batik atau pun kain dengan motif batik Jawa. Permohonan izin ini terkait dengan falsafah yang terdapat dalam motif batik Jawa agar tidak disalahgunakan. Pandangan yang sama juga disampaikan oleh Neneng Iskandar, bahwa perlindungan terhadap batik bukan untuk membatasi inovasi terhadap batik, tapi untuk melestarikan batik dan perlindungan hak moral terhadap batik.

2. Orisinalitas

   Kualifikasi orisinalitas berhubungan dengan konsep orisinalitas dalam ranah hukum hak kekayaan intelektual. Dalam hukum hak kekayaan intelektual, konsep orisinalitas memiliki pengertian sebagai sesuatu karya intelektual yang baru. Konsep orisinalitas dalam komunitas masyarakat batik adalah pengembangan lebih lanjut dari tradisi yang lama. Dalam hubungannya dengan batik Jawa, kekhasan batik Jawa yang terletak pada ragam hias. Oleh karena itu untuk dapat disebut sebagai batik Jawa, maka nilai-nilai tradisi tidak dapat dihilangkan. Oleh karena itu konsep orisinalitas yang terkandung dalam batik Jawa adalah pengembangan kembali konsep yang lama.

3. Ekonomi Kreatif

   Kualifikasi ekonomi kreatif dilakukan berdasar model ekonomi kreatif yang diterapkan. Model penerapan ekonomi kreatif memberi arahan terhadap klasifikasi inti dari industri yang menjadi bagian dari ekonomi kreatif yang akan dijalankan oleh negara. Berdasarkan prinsip kualifikasi, model ekonomi kreatif yang dijalankan di Indonesia adalah model *United Kingdom Department of Culture, Media, and Sport* 2001 (UK DCMS).[196] Sesuai

berdasarkan nilai estetik dari masing-masing pembuat batik, namun hal yang harus tetap diperhatikan adalah perpaduan motif utama yang harus selalu ditampilkan dalam setiap inovasi akan batik.

[196] Departemen Perdagangan Republik Indonesia., *loc. cit.*

dengan model UK DCMS, ekonomi kreatif Indonesia terdiri dari 14 subsektor.[197] Berdasarkan model ini, terdapat tiga aktor utama penggerak ekonomi kreatif yaitu (i) pemerintah, (ii) cendekiawan, dan (iii) pelaku usaha.[198]

4. Indikasi Geografis

   Indikasi geografis memperoleh perlindungan melalui Pasal 22-23 TRIPs. Berdasarkan ketentuan tersebut, yang dapat memperoleh perlindungan melalaui indikasi geografis adalah produk yang dihasilkan pada suatu wilayah yang memiliki karakter khas yang diperoleh dari kondisi geografis wilayah tersebut. Perlindungan indikasi geografis yang diakui oleh TRIPs hingga saat ini masih terbatas pada produk agrikultur khususnya *wine* dan *spirit.* Dalam ranah hukum perlindungan indikasi geografis nasional berdasar Pasal 56 Undang-Undang Nomor 15 Tahun 2001 tentang Merek[199], faktor manusia merupakan indikator yang diakui untuk memperoleh perlindungan indikasi geografis. Berdasarkan ketentuan tersebut, berdasar hukum Indonesia, batik dapat memperoleh perlindungan melalui ranah indikasi geografis karena selain faktor alam yang menentukan warna batik, faktor manusia berupa keterampilan dan pengetahuan tradisional untuk membatik dapat dijadikan indikator untuk memperoleh perlindungan melalui Indikasi Geografis.

5. Konsep Kepemilikan

   Konsep kepemilikan yang dianut dalam ruang lingkup kekayaan intelektual adalah konsep kepemilikan secara individu. Bahwa suatu karya intelektual merupakan ekspresi seorang individu. Dalam perlindungan batik sebagai produk budaya dalam ruang lingkup kekayaan intelektual konsep kepemilikan

[197] Indonesia menambah 1 subsektor dalam ekonomi kreatif yaitu subsektor riset dan pengembangan.

[198] Departemen Perdagangan Republik Indonesia, *op. cit.*, hal. 61.

[199] Dalam peraturan perundang-undangan Indonesia tentang Hak Kekayaan Intelektual, Indikasi Geografis masuk ke dalam ranah peraturan mengenai merek. Oleh karena itu, perlindungan terhadap Indikasi Geogradis terdapat pada Undang-Undang Nomor 15 Tahun 2001 tentang Merek.

yang dianut bukanlah konsep kepemilikan individu tapi konsep kepemilikan secara komunal. K.R.A Hardjosoewarno menyatakan bahwa dalam komunitas masyarakat batik, tidak dikenal konsep individu, karena terdapat tradisi untuk saling meniru ragam hias batik yang kemudian berkembang menjadi ciri khas dari suatu daerah pembatikan.[200]

c. Hak-Hak yang Telah Diperoleh

Hak-hak yang telah diperoleh atau *vested rights* adalah suatu pelanjutan keadaan hukum.[201] Hak-hak yang telah diperoleh memberi perlindungan terhadap hak legal yang telah diperoleh seseorang atau komoditas melalui hukum yang berlaku di negaranya saat berada di dalam wilayah hukum negara asing. Perlindungan berdasarkan hak-hak yang telah diperoleh memiliki peranan yang penting dalam hubungan internasional. Hal ini disebabkan dengan kemajuan teknologi, maka pergerakan manusia dan barang yang melewati batas wilayah negara tidak dapat dihindari. Pergerakan manusia dan barang yang melewati batas wilayah negara tersebut akan mengakibatkan pertemuan lebih dari satu kaidah hukum yang berlaku atas manusia atau barang.

Dalam ruang lingkup hukum perdata internasional, hak-hak yang telah diperoleh digunakan untuk mengedepankan bahwa perubahan fakta yang menyebabkan diberlakukannya kaidah hukum tertentu dalam suatu hubungan tidak akan mempengaruhi berlakunya kaidah hukum yang semula.[202] Pokok permasalahan dari konsep hak-hak yang telah diperoleh adalah perlunya diberikan perlindungan terhadap hak yang telah diperoleh dalam batasan tertentu.[203] Selanjutnya, Sudargo Gautama berpendapat bahwa salah satu kewajiban utama badan-badan peradilan

[200] Hasil wawancara dengan K.R.A Hardjosoewarno pada tanggal 29 April 2010. *op.cit.*

[201] Sudargo Gautama (D), *Hukum Perdata Internasional Indonesia*, cet.2, (Bandung: P.T. Alumni, 1998), hal. 259.

[202] *Ibid.*, hal. 261.

[203] *Ibid.*, hal. 260.

negara yang beradab untuk secara tidak berat sebelah, melindungi hak-hak yang ada, walaupun hak-hak ini berasal dari luar negeri.[204]

Diberlakukannya konsep hak-hak yang telah diperoleh bukan berarti adanya pelanggaran terhadap kedaulatan negara. Sebaliknya, melalui konsep hak-hak yang telah diperoleh ini kedaulatan negara dijunjung dan dihargai dalam ranah hukum internasional. Hal ini disebabkan bahwa dengan diterapkannya konsep hak-hak yang telah diperoleh dilakukan suatu penghargaan terhadap sistem hukum negara lain yang telah memberi hak legal terhadap seseorang ataupun pada sebuah barang. Jika suatu hubungan hukum telah terjadi di negara asing antara warganegara dan negara menurut hukum yang berlaku di negara tersebut, maka negara lain akan mengakuinya sebagai hubungan hukum yang telah tercipta secara sah.[205] Sehingga perlindungan secara internasional terhadap hak-hak yang telah diperoleh secara sah secara lazim akan diberikan juga di luar negeri.[206] Penghargaan terhadap hak yang diperoleh ini memiliki kaitan dengan konsep timbal balik.[207] Bahwa jika suatu negara tidak menghargai hak yang diperoleh di negara asing, maka hak yang diberikan negara tersebut terhadap warga negara dan barang di wilayahnya tidak akan memperoleh perlindungan di wilayah negara lain. Lebih lanjut, Dicey seorang sarjana hukum perdata internasional Inggris, menyatakan bahwa suatu hak yang telah diperoleh di suatu negara, jika tidak dilindungi dapat menimbulkan rasa ketidak adilan sehingga dapat menghambat perkembangan hubungan internasional[208].

Walaupun konsep hak-hak yang telah diperoleh merupakan wujud penghargaan dan saling menghormati antar negara, perlu dilihat sampai batasan mana hak yang telah diperoleh di luar negeri dapat diberlakukan pada suatu negara. Oleh karena itu, perlu ditekankan bahwa yang diakui adalah hak-hak subyektif yang

[204] *Ibid.*, hal. 264.

[205] *Ibid.*, hal. 277.

[206] *Ibid.*, hal. 278.

[207] Penjelasan tentang timbal balik akan dipaparkan pada 84.

[208] Gautama (D), *op.cit.*, hal. 282.

diciptakan oleh hukum asing dan bukan hukum asing saja.[209] Lebih lanjut, untuk dapat diakui di negara lain, suatu hak harus diperoleh dengan patut. Perkembangan selanjutnya pada konsep hak-hak yang telah diperoleh adalah negara sang hakim bisa memberi batasan terhadap hak asing yang telah diperoleh. Batasan ini dilakukan jika dipandang bahwa hak asing tersebut bertentangan dengan moral dari negara sang hakim. Oleh karena itu, terdapat dua konsepsi hak-hak yang telah diperoleh yaitu:[210]

1. Konsep hak-hak yang telah diperoleh yang *unqualified*

   Konsepsi hak-hak yang telah diperoleh ini dipandang sebagai konsep tua dari hak-hak yang telah diperoleh. Berdasar konsep ini, terdapat suatu kecondongan untuk melihat bahwa hukum asing yang menentukan hak mana yang dapat memperoleh perlindungan di luar wilayahnya. Melalui pandangan ini *lex fori* hanya memiliki peran untuk menentukan perlindungan terhadap hak-hak yang telah diperoleh jika muncul permasalahan yang terkait dengan ketertiban umum.
2. Konsepsi hak-hak yang telah diperoleh yang *modern*

   Konsepsi hak-hak yang telah diperoleh ini melihat bahwa *lex fori* yang memiliki peran untuk menentukan apakah suatu hak telah diperoleh menutut sistem hukum asing. Hal ini mengakibatkan peran *lex fori* berperan dalam dua tahap dalam menentukan apakah suatu hak telah diperoleh menurut sistem hukum asing. Peran *lex fori* hadir untuk menentukan apakah suatu hak telah diperoleh dan pada saat timbul persoalan tentang ketertiban umum.

Indonesia telah menganut konsep hak-hak yang telah diperoleh dalam peraturan hukum Indonesia. Menurut pendapat Sudargo Gautama konsep hak-hak yang telah diperoleh hanya digunakan sebagai pembantu dalam mempergunakan

[209] *Ibid.,* hal. 263.

[210] *Ibid.,* hal. 290-291.

hukum.[211] Sehingga dapat disimpulkan bahwa Indonesia menerima konsep hak-hak yang telah diperoleh secara terbatas. Sudargo Gautama melanjutkan bahwa hak-hak yang diperoleh bukanlah sebagai dasar dari seluruh sistem hukum perdata internasional, tap sebagai bantuan bagi sang hakim untuk memilih hukum yang harus digunakan.[212]

Dalam kaitannya dengan perlindungan hukum terhadap batik, maka berdasar konsep hak-hak yang telah diperoleh batik telah memperoleh suatu hak legal berdasar hukum Indonesia. Hak-hak yang telah diperoleh oleh batik Imelalui perlindungan hukum adalah hak yang terkait dengan perlindungan melalui ranah hukum kekayaan intelektual. Hak-hak yang telah diperoleh oleh batik berupa (i) perlindungan hak cipta dan (ii) perlindungan melalui tanda otentisitas. Melalui Pasal 10-12 Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta, seni batik merupakan ciptaan yang dilindungi. Sebagai ciptaan seni tradisional yang tidak diketahui penciptanya, hak cipta seni batik dipegang oleh pemerintah. Melalui penjelasan Pasal 10 Undang-Undang Nomor 19 Tahun 2002, maka seni batik sebagai folklor memperoleh jangka waktu perlindungan yang tidak terbatas pada waktu. Perlindungan hak cipta ini merupakan hak yang telah diperoleh oleh batik berdasar hukum Indonesia. Berdasar prinsip hak-hak yang telah diperoleh maka perlindungan batik melalui hak cipta ini dapat diakui kekuatan hukumnya saat batik Jawa melintasi batas wilayah Indonesia.

Selanjutnya, batik telah memperoleh perlindungan hukum berupa hak otentisitas. Hak otentisitas ini dituangkan pemerintah Indonesia dalam wujud Batikmark. Merujuk pada Undang-Undang Nomor 19 Tahun 2002, Undang-Undang Nomor 5 Tahun 1992 Tentang Benda Cagar Budaya, Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, dan Peraturan Menteri Perindustrian RI Nomor 19/M-IND/PER/5/2006 Tentang Standarisasi, Pembinaan dan Pengawasan Standar Nasional Indonesia Bidang Industri, pada tahun 2007 Kementerian Perindustrian mengeluarkan Peraturan Menteri Perindustrian RI Nomor 74/M-

[211] *Ibid.,* hal. 329.

[212] *Ibid.,* hal. 330.

IND/PER/9/2007 Tentang Penggunaan Batikmark "batik Indonesia" Pada Batik Buatan Indonesia. Batikmark merupakan tanda yang menunjukkan identitas batik Indonesia. Penggunaan batikmark ini merupakan perlindungan yang diberikan pemerintah kepada batik untuk membedakan batik Indonesia dari produk imitasi batik. Berdasar prinsip hak-hak yang telah diperoleh, maka penggunaan batikmark ini dapat diakui kekuatan hukumnya dalam dunia internasional seperti yang berlaku pada "Silkmark" yang berasal dari India.

d. *Comity Doctrine*

Comity Doctrine atau asas *comitas* berkembang pertama kali di Belanda. *Comity doctrine* pertama kali dicetuskan karena terdapat keragaman sistem hukum. *Comity doctrine* berperan untuk menjembatani perbenturan antara kedaulatan negara yang bersifat teritorial dan adanya kebutuhan akan perdagangan internasional.[213] Belum ada definisi yang seragam dalam dunia internasional tenatang *comity docrine*. Beberapa sarjana dan hakim memberi pengertian terhadap *comity doctrine* antara lain sebagai (i) pilihan hukum, (ii) kewajiban moral, (iii) rasa hormat dalam hubungan internasional, (iv) timbal balik, (v) diplomasi, dan sebagainya.[214] Ulrich Huber sebagai salah seorang pencetus *comity doctrine* menjelaskan bahwa *comity doctrine* secara prinsip masuk ke dalam ranah hukum perdata internasional, namun penafsiran *comity doctrine* bertumpu pada prinsip hukum internasional publik.[215] *Comity doctrine* memiliki fungsi sebagai landasan diterapkannya hukum asing.[216] *Comity doctrine* berkembang sebagai akibat dari pertemuan berbagai sistem hukum dalam

[213] "Hessel E. Yntema, *"The Comity Doctrine","* http://www.jstor.org/stable/1286930, diunduh 24 April 2010.

[214]" Joel R. Paul (A), *"The Transformation of International Comity","* http://www.law.duke.edu/journals/lcp. , diunduh 15 Juni 2012.

[215] Yntema, *op.cit.*

[216] Joel R. Paul (B), *Comity in International Law,* (makalah merupakan bagian dari *Harvard Law Journal*, 1991)

suatu peristiwa hukum karena pergerakan manusia dan barang yang melewati batas wilayah negara.

Ulrich Huber menyebut *comity doctrine* sebagai kesopanan antar bangsa sebagai dasar pembenar diberlakukannya hukum asing dalam wilayah suatu negara.[217] Menurut pendapat Ulrich Huber, suatu hak yang telah diperoleh dalam suatu negara tetap berlaku di mana saja, selama hak tersebut tidak bertentangan dengan moral bangsa atau moral hukum negara lain.[218] Lebih lanjut, Huber memaparkan bahwa, *comity doctrine* merupakan prinsip dalam hukum internasional, tapi pelaksanaannya dilakukan berdasarkan kehendak bebas negara.[219] Hal ini didasarkan pada dasarnya hukum memiliki prinsip teritorial. Bahwa setiap negara memiliki kedaulatan untuk menentukan hukum yang berlaku di dalam wilayahnya dan siapa yang tunduk di hadapan hukum tersebut. Namun, dengan berkembangnya hubungan internasional diperlukan suatu penghargaan terhadap kedaulatan negara lain. Dasar dari *comity doctrine* adalah rasa saling menghargai kedaulatan antar negara. Hal ini juga memiliki hubungan dengan timbal balik. Bahwa dengan diberlakukannya *comity doctrine* akan mendorong adanya perlakuan timbal balik dari negara lain. Hubungan antara *comity doctrine* dengan prinsip timbal balik ditekankan melalui pernyataan seorang hakim di Amerika Serikat yang menyatakan bahwa *comity doctrine* bukanlah suatu kewajiban yang absolut dan tidak juga merupakan rasa hormat antar negara.[220] Namun, *comity doctrine* merupakan pengakuan akan tanggung jawab internasional negara untuk kelancaran berjalannnya hubungan internasional. Pengakuan negara ini, juga dilakukan untuk menjamin hak warga negaranya dan semua pihak yang berada di bawah kuasa hukumnya. Pengakuan terhadap berlakunya hukum asing berdasar *comity doctrine* juga dilakukan setalah

[217] Paul (A), *op.cit.*

[218] *Ibid.*

[219] *Ibid.*

[220] *Ibid.*

ada pembuktian dari negara asing yang memberikan perlakuan yang sama atas hukum negara forum.[221]

Comity doctrine juga memiliki hubungan dengan prinsip ketertiban umum. Hal ini ditunjukkan dengan perkembangan ajaran *comity doctrine* bahwa hakim memiliki wewenang untuk menentukan kapan hukum asing dapat diberlakukan berdasar *comity doctrine* dan kapan untuk tidak memberlakukan hukum asing. Selain hubungannya dengan prinsip ketertiban umum dan timbal balik, *comity doctrine* juga memiliki hubungan dengan prinsip hak-hak yang telah diperoleh. Seorang sarjana, Joseph H. Beale berpendapat bahwa *comity doctrine* berlaku karena adanya penerapan prinsip hak-hak yang telah diperoleh.[222] Dengan perkembangan *comity doctrine* ini, maka banyak ahli dan sarjana yang berpendapat bahwa *comity doctrine* merupakan suatu kewajiban negara dalam hubungan internasional dan tidak hanya suatu rasa hormat antar negara semata.[223]

Dalam kaitannya dengan perlindungan terhadap batik, maka dilihat dari sudut pandang *comity doctrine*, perlindungan yang telah diberikan terhadap batik melalui hak cipta dan batikmark dapat diberlakukan di dunia internasional. Hal ini didasarkan bahwa melalui *comity doctrine* diakui hak yang telah diperoleh di negara lain. Oleh karena itu, berdasarkan *comity doctrine*, maka perlindungan terhadap batik ditentukan berdasar hukum Indonesia. Indonesia sebagai negara yang berdaulat telah memberi perlindungan terhadap produk budaya yang dihasilkan di wilayah Indonesia. Sehingga saat batik melalui perdagangan internasional memasuki wilayah hukum asing, perlindungan yang telah diperoleh oleh batik tetap dapat dilaksanakan.

e. Timbal Balik

Teori timbal balik memiliki kaitan dengan pengakuan hukum asing dan pemakaian hukum asing. Teori timbal balik umumnya lebih sering digunakan dalam

[221] *Ibid.*

[222] *Ibid.*

[223] *Ibid.*

ranah hukum internasional publik. Dalam teori timbal balik terkandung asas persamaan hak dalam ruang lingkup hukum internasional. Artinya, adanya suatu persamaan derajat atau kesejajaran posisi setiap negara dalam hubungan internasional. Dalam ruang lingkup hukum perdata internasional, timbal balik adalah pemakaian hukum asing yang penggunaannya bukanlah suatu kemutlakan tetapi dihubungkan dengan sikap negara asing terhadap pemakaian hukum sendiri.[224]

Penerapan timbal balik, tidak berbeda dengan asas comitas dan hak-hak yang telah diperoleh, dilakukan untuk kelancarang berlangsungnya hubungan internasional. Namun demikian, penerapan hukum asing berdasarkan timbal balik harus terlebih dahulu memenuhi persyaratan berupa pembuktian dari adanya persamaan oleh negara asing yang bersangkutan dan setelah itu baru dapat diberikan persamaan oleh negara sendiri.[225] Pemakaian hukum asing berdasar teori timbal balik ini juga dibatasi oleh ketertiban umum. Jika dipandang bahwa pemakaian hukum asing tersebut bertentangan dengan ketertiban umum dari *lex fori* maka tidak dapat dilakukan pemakaian hukum asing. Pemakaian hukum asing hanya diakukan jika terdapat kecocokan dan untuk kebutuhan hukum dalam hubungan internasional.[226]

Berdasarkan persyaratan yang harus terpenuhi sebelum dilaksanakannya pemakaian hukum asing, Sudargo Gautama berpendapat bahwa pemakaian hukum asing bukanlah suatu pengorbanan.[227] Lebih lanjut, tidak berarti bahwa hukum asing harus selalu dipergunakan jika negara asing tersebut memakai hukum negara kita. Terkait dengan prinsip timbal balik yang diberlakukan di Indonesia, Sudargo Gautama menyatakan ada kecondongan pada pendirian untuk tidak mempergunakan

[224] Sudargo Gautama (E), *Hukum Perdata Internasional Indonesia Buku Keenam,* ed.1, cet. 3, (Bandung: P.T. Alumni, 2007), 142-143.

[225] *Ibid.,* hal.147.

[226] *Ibid.,* hal. 158.

[227] *Ibid.*

prinsip timbal balik dalam rangka pengakuan keputusan hakim asing.[228] Berdasarkan bentuknya, timbal balik dapat dibedakan menjadi:[229]

1. Timbal balik formal

   Dalam timbal balik formal dikedepankan bahwa orang asing memperoleh perlakuan yang sama dengan warga negara dengan syarat bahwa di negara orang asing tersebut warga negara juga diperlakukan demikian. Timbal balik formal dibagi menjadi dua bentuk yaitu (i) klausula *national treatment* dan (ii) klausula *most favored nation.* Dalam kalusula *national treatment,* orang asing akan memperoleh perlakuan yang sama dengan warga negara sendiri. Selanjutnya klausula *most favored nation* umumnya terkait dengan timbal balik antar negara yang terkait dengan perjanjian internasional. Melalui klausula *most favored nation* warga negara dari negara-negara anggota perjanjian internasional akan memperoleh perlakuan yang sama dengan negara anggota perjanjian lainnya di masing-masing wilayah negara anggota perjanjian internasional. Klausula *most favored nation* banyak digunakan dalam perdagangan internasional dengan tujuan untuk mendorong perkembangan perdagangan antar negara.
2. Timbal balik materiil

   Timbal balik materiil ini tunduk pada hukum negara hakim. Dalam timbal balik materiil terdapat hubungan yang sejajar antar negara. Hak-hak yang diberikan kepada orang asing oleh negeri sang hakim juga diberikan kepada warga negara dari negeri sang hakim yang berada di luar negeri.

Dalam kaitannya dengan perlindungan hukum terhadap batik, maka berdasar timbal balik formal, timbal balik dilakukan berdasar prinsip *national treatment*. Berdasar prinsip ini, maka perlindungan terhadap batik dilihat dari sudut pandang kekayaan intelektual. Prinsip *national treatment* berlaku di wilayah seluruh negara anggota perjanjian internasional. Indonesia sebagai anggota dari Konvensi Bern dan

[228] *Ibid.,* hal. 159.

[229] *Ibid.,* hal. 149-158.

WTO yang keduanya menganut prinsip *national treatment*. Oleh karena itu berdasarkan prinsip *national treatment* perlindungan terhadap batik dilakukan berdasarkan hukum Indonesia. Hal ini dikarenakan melalui prinsip *national treatment* warga negara asing yang berada di dalam wilayah suatu negara memperoleh perlakuan yang sama dengan warga negara tersebut. Selanjutnya prinsip timbal balik menekankan adanya suatu persamaan derajat antar negara di mana tindakan suatu negara terhadap negara yang lain akan menentukan tindakan negara lain terhadap negara tersebut. Sehingga perlindungan yang sudah diberikan terhadap batik melalui hak cipta dan batikmark dapat dilaksanakan dalam ruang lingkup internasional.

f. Ketertiban Umum

Ketertiban umum adalah memberlakukan hukum nasional dalam wilayah nasional negara.[230] Pemberlakuan ketertiban umum merupakan pengesampingan pelaksanaan hukum asing yang seharusnya dilaksanakan, karena hukum asing dipandang bertentangan dengan moral dan hukum yang berlaku di negara tersebut. Ketertiban umum memiliki peran yang penting dalam hubungan internasional. Hal ini disebabkan melalui ketertiban umum, ditegaskan kedaulatan negara untuk dapat melaksanakan hukum nasional di dalam wilayahnya.

Sudargo Gautama berpendapat bahwa ketertiban umum tidak dapat diterapkan secara kaku.[231] Tidak setiap penyimpangan dari peraturan hukum nasional harus dikesampingkan. Sistem hukum yang asing dengan sistem hukum nasional tidak selalu berarti pelanggaran terhadap ketertiban hukum negara.[232] Lebih lanjut, ketertiban umum dapat dilaksanakan jika kaidah asing yang dihadapi merupakan sesuatu yang sangat bertentangan dengan perasaan hukum dan tata sosial

[230] Sudargo Gautama (F), *Hukum Perdata Internasional Indonesia Buku Keempat,* ed.2, cet. 3, (Bandung: P.T. Alumni, 2007), hal. 14.

[231] *Ibid.*, hal 46.

[232] *Ibid.*

masyarakat.[233] Ketertiban umum hanya dapat dilaksanakan jika pemakaian kaidah asing yang telah ditunjuk oleh hukum perdata internasional akan membawa hasil yang tidak dapat diterima oleh moral masyarakat.[234]

Dalam hubungan internasional, perlu diperhatikan sikap saling menghormati antar negara. Pemakaian ketertiban umum yang terlalu kaku dapat mengakibatkan adanya penilaian superior terhadap hukum nasional yang selanjutnya dapat mengundang kecaman moral dunia internasional. Pelaksanaan ketertiban umum hanya merupakan batasan terhadap hukum asing yang diberlakukan dalam ruang lingkup hukum nasional. Pemberlakuan prinsip ketertiban umum terkait dengan prinsip teritorial. Hal ini dikarenakan prinsip ketertiban umum terikat dengan ruang dan waktu.[235] Masing-masing negara memiliki ketertiban umum yang berbeda antara yang satu dengan lainnya.

Dalam kaitan dengan perlindungan hukum terhadap batik, maka peran ketertiban umum dilihat sebagai basis negara untuk memberi perlindungan terhadap batik sebagai budaya yang memiliki dua unsur, yaitu unsur ekonomi dan unsur budaya. Konvensi UNESCO 2005 dalam Pasal 2 paragraf 2 mengatur mengenai prinsip kedaulatan negara. Dalam pasal ini, negara memiliki hak yang berdaulat untuk mengadopsi langkah-langkah dan peraturan untuk melindungi dan mengembangkan keragaman budaya dalam wilayah masing-masing. Berdasar ketentuan Pasal 2 paragraf 2 Konvensi UNESCO 2005 tersebut dapat disimpulkan bahwa negara memiliki kewenangan untuk melakukan tindakan perlindungan terhadap budaya dari ancaman terhadap keberlangsungan budaya tersebut. Artinya, negara memiliki kewenangan untuk mengambil tindakan yang dipandang penting untuk melestarikan keragaman budaya yang berada di dalam wilayahnya. Jika dikaitkan dengan perlindungan batik di Indonesia, melalui ketertiban umum maka negara memiliki kewenangan untuk mengadopsi tindakan yang dipandang penting untuk menjaga

[233] *Ibid.,* hal. 47.

[234] *Ibid.*

[235] *Ibid.,* hal 127.

kelestarian batik dan memberi tanda pada batik untuk menjamin orisinalitas batik. Contohnya dengan menerapkan batikmark. Batikmark dapat dipandang sebagai ketertiban umum karena batikmark berfungsi untuk memberi ciri pembeda batik buatan Indonesia. Saat ini, 75 persen batik yang dipasarkan adalah batik print atau kain bermotif batik.[236] Pendapat ini didukung oleh pendapat Kahfiati Kahdar yang menyatakan bahwa *Dries Van Noten* rumah mode asal Belgia memperagakan kain dengan motif batik Jawa dalam koleksi Musim Panas 2010 di Paris.[237] Lebih lanjut, M.S Hidayat menyatakan bahwa Cina telah mempelajari motif batik Jawa dan memproduksi kain bermotif batik secara massal.[238] Dengan maraknya produksi massal kain bermotif batik yang memasuki pasar Indonesia, maka batikmark dapat dilihat sebagai tanda orisinalitas yang digunakan pemerintah Indonesia untuk menjaga kelangsungan batik sebagai warisan budaya untuk membedakan dengan produk tiruan batik yang diproduksi oleh pihak asing.[239]

C. Tahapan Pembentukan Perjanjian Internasional Terhadap Warisan Budaya yang Terkait dengan Batik

Upaya perlindungan terhadap batik dapat dilihat dari sudut pandang batik sebagai warisan budaya, batik sebagai kekayaan intelektual, dan batik sebagai komoditas perdagangan. Perlindungan hukum melalui pembentukan suatu perjanjian internasional yang telah dilakukan sejak tahun 1967 hingga saat ini belum mencapai

[236] Hasil wawancara dengan Bapak Agus Priyono Kementerian Perdagangan Republik Indonesia, wawancara dilakukan pada 15 April 2011.

[237] Hasil wawancara dengan Kahfiati Kahdar, wawancara dilakukan 2 Maret 2010, *op.cit*

[238] Sastroy Bangun, "50 Perusahaan Batik "mark" baru," http://waspada.co.id/index.php?option=com_content&view=article&id=211659:50-perusahaan-batik-mark-baru&catid=18:bisnis&Itemid=95, diakses 1 Juli 2012.

[239] Batimark digunakan sebagai ketertiban umum terkait dengan diberlakukannya prinsip timbal balik *national treatment* yang terkait dengan hak kekayaan intelektual. Melalui perdagangan bebas maka, produk asing pun memperoleh perlindungan yang sama dengan produk dalam negeri. Oleh karena itu penggunaan batikmark dilihat sebagai petunjuk orisinalitas terhadap produk batik agar terdapat suatu pembeda antara batik dengan produk imitasi batik. Di Indonesia belum terdapat kasus perkara yang melibatkan pentingnya ketertiban umum dalam perlindungan terhadap warisan budaya. Sebagai ilustrasi kasus, dapat dilihat contoh yang terjadi di Australia pada halaman 142.

titik final. Karakter dari budaya yang dinamis dan kompleks mengakibatkan sulit untuk menciptakan satu perjanjian internasional yang dapat mengakomodasi perlindungan yang dibutuhkan untuk melestarikan budaya, melindungi segi kekayaan intelektual dari budaya, dan memberi perlindungan bagi produk budaya saat produk budaya menjadi komoditas perdagangan. Oleh karena itu, WIPO dan UNESCO menempati posisi sentral dalam upaya untuk memberi perlindungan terhadap warisan budaya. Walaupun kerja sama antar organisasi internasional terutama oleh WIPO dan UNESCO telah dilaksanakan, perbedaan objektif dan sudut pandang dari kedua organisasi tersebut mengakibatkan masing-masing organisasi untuk melaksanakan upaya perlindungan terhadap budaya secara independen.

Jalan buntu yang dihadapi oleh kerjasama antara WIPO dan UNESCO tidak menyebabkan adanya kekosongan hukum internasional dalam ranah perlindungan terhadap budaya. UNESCO telah berhasil menghasilkan perjanjian internasional berupa konvensi dan deklarasi yang sifatnya saling melengkapi antara satu dengan lainnya dengan memfokuskan perlindungan berupa pelestarian budaya. Pelestarian batik sebagai warisan budaya telah berhasil dilakukan dengan diakuinya batik sebagai warisan budaya tak berwujud dalam *Representative List of the Intangible Cultural Heritage of Humanity*. Di lain pihak, WIPO sebagai lembaga kekayaan intelektual dunia, telah memasuki sesi ke-17 dari komite antar pemerintah yang membahas tentang upaya perlindungan ekspresi budaya tradisional melalui hak kekayaan intelektual. Perjalanan panjang yang telah ditempuh masyarakat internasional untuk menghasilkan instrumen hukum internasional bagi perlindungan budaya dapat dilihat melalui tabel sebagai berikut:

Tabel 2[240]

Tahapan Pembentukan Perjanjian Internasional dalam Bidang Warisan Budaya

Tahun	Keterangan
1967	• Amandemen terhadap Konvensi Berne menyediakan suatu mekanisme

[240] Diolah dari "WIPO (B), "Intellectual Property and Traditional Cultural Expressions/Folklore", http://www.wipo.int/freepublications/en/tk/913/wipo_pub_913.pdf ,diunduh pada 29 Maret 2010 dan "UNESCO, " Working towards a Convention", http://www.unesco.org/culture/ich/doc/src/01854-EN.pdf , diunduh pada 6 Mei 2010.

	untuk perlindungan internasional terhadap karya yang tidak diketahui penciptanya dan untuk karya yang tidak dipublikasikan. • Menurut penyusun amandemen ini, Pasal 15.4 dari Konvensi Berne memberi arah untuk perlindungan internasional bagi ekspresi budaya tradisional
1972	• UNESCO meresmikan *World Heritage Convention (WHC)* yang memiliki objektif untuk memberi perlindungan terhadap budaya berupa kenanekaragaman hayati, bangunan, ataupun situs bersejarah. • WHC merupakan cikal bakal diresmikannya perlindungan internasional terhadap warisan budaya tak berwujud oleh UNESCO.
1976	• *Tunis Model Law on Copyright for Developing Countries* diresmikan. • Dalam model law ini, diperkenalkan konsep perlindungan *sui generis* terhadap ekspresi budaya tradisional dan perlindungan hak kekayaan intelektual yang dapat diaplikasikan terhadap budaya.
1982	• WIPO dan UNESCO membentuk tim ahli untuk mengembangkan perlindungan hak kekayaan intelektual *sui generis* untuk ekspresi budaya tradisional. • Dari pembentukan tim ahli tersebut, dihasilkan *WIPO-UNESCO Model Provisions.* • UNESCO menyelenggarakan *World Conference on Cultural Policies* di Mexico City. Dalam konferensi ini, dilakukan peninjauan kembali terhadap definisi budaya yang di dalamnya mencakup konsep warisan budaya tak berwujud. • *World Conference on Cultural Policies* menghasilkan *Mexico City Declaration on Cultural Policies* yang di dalamnya terminologi

	warisan budaya tak berwujud secara resmi digunakan.
1984	• WIPO-UNESCO membentuk tim ahli dalam perlindungan hak kekayaan intelektual internasional bagi ekspresi budaya tradisional. • Tim ahli yang dibentuk tersebut, menghasilkan rancangan perjanjian berdasarkan model provisions 1982. Namun, mayoritas dari peserta melihat bahwa perjanjian internasional masih belum dapat diresmikan.
1989	• UNESCO meresmikan *UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore* (Rekomendasi 1989). • Rekomendasi ini merupakan instrumen hukum internasional pertama yang secara spesifik memberi perlindungan terhadap warisan budaya tak berwujud.
1992-1996	• *World Commission on Culture and Development* dibentuk oleh UNESCO yang bekerja secara independen. • Pada tahun 1996 dihasilkan laporan dari komisi ini dengan judul *Our Cultural Diversity*. Dalam laporan ini, ditekankan di antaranya (i) keragaman warisan budaya baik berwujud maupun tak berwujud dan sifatnya yang member identitas bagi masyarakat, (ii) warisan budaya tak berwujud belum menerima perlindungan yang sama dengan warisan budaya berwujud seperti monumen, (iii) pentingnya kebijakan pelestarian budaya sebagai bagian dari perkembangan ekonomi, (iv) para ahli dalam komisi ini memandang bahwa warisan budaya belum dimanfaatkan secara efektif. • Dalam laporan ini juga dilihat hubungan antara warisan budaya tak berwujud dengan hak kekayaan intelektual serta isu dan resiko dari hubungan keduanya.

1997	• UNESCO bersama WIPO melaksanakan *UNESCO-WIPO World Forum on The Protection of Folklore* di Phuket, Thailand. • Ketua Umum UNESCO mengajukan dua tindakan paralel untuk melindungi warisan budaya, yaitu: (i) membentuk *the Programme of the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity* untuk meningkatkan kesadaran internasional akan pentingnya perlindungan terhadap warisan budaya tak berwujud; (ii) menyelenggarakan penelitian untuk mengembangkan instrumen hukum yang memberikan standar bagi perlindungan ekspresi budaya tradisional.
1998-1999	• WIPO menjalankan *fict-finding mission* di 28 negara untuk mengidentifikasi ekspektasi dari pemegang hak pengetahuan tradisional akan perlindungan bagi pengetahuan tradisional. • Dalam *fact finding mission* ini, ekspresi budaya tradisional dikualifikasikan sebagai bagian dari pengetahuan tradisional. • Hasil dari *fact finding mission* ini dipublikasikan oleh WIPO dalam sebuah laporan dengan judul *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-finding Missions (1998-1999).* • Pada tahun 1999 WIPO menyelenggarakan *Regional Consultations on the Protection of Expressions of Folklore* di negara-negara Afrika, Asia dan Pasifik, Timur Tengah, Amerika Selatan, dan Karibia. • Dari rekomendasi dan resolusi yang dihasilkan, diperoleh kesimpulan bahwa UNESCO dan WIPO sebaiknya meningkatkan kerja sama untuk memberi perlindungan terhadap ekspresi budaya tradisional dan dibutuhkannya suatu perlindungan internasional yang efektif bagi perlindungan ekspresi budaya tradisional.

2000	• WIPO mendirikan *WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (IGC).
2001	• Konferensi Umum UNESCO mengesahkan *Universal Declaration in Cultural Diversity*. Deklarasi ini merupakan dasar untuk pengembangan instrumen hukum bagi perlindungan warisan budaya tak berwujud. • Dalam deklarasi ini, negara anggota menekankan pentingnya perlindungan terhadap pengetahuan tradisional.
2003	• *The Convention for the Safeguarding of the Intangible Cultural Heritage* (ICHC) diresmikan oleh UNESCO. • ICHC melindungi pelestarian budaya tak berwujud melalui pewarisani budaya antar generasi dalam masyarakat dan komunitas di mana warisan budaya tak berwujud tersebut hidup. • Melalui ICHC memberikan pengakuan internasional terhadap warisan budaya tak berwujud, didasarkan pada pentingnya nilai warisan budaya tak berwujud bagi identitas masyarakat dan komunitas di mana warisan budaya tak berwujud itu hidup.
2005	• *The Convention on the Protection and Promotion of the Diversity of Cultural Expressions* diresmikan oleh UNESCO. • Konvensi UNESCO 2005 memberi perlindungan terhadap produksi dari ekspresi budaya berupa benda dan jasa.
2009	• Batik diakui oleh UNESCO sebagai warisan budaya tak berwujud dan dimasukkan ke dalam *Representative List of the Intangible Cultural Heritage of Humanity*.

2010	• WIPO Komisi Antar Pemerintah (IGC) *Intersessional Working Group* (IWG) untuk membahas lebih lanjut mengenai perlindungan terhadap ekspresi budaya tradisional.

D. Perlindungan Terhadap Batik Sebagai Warisan Budaya

Dalam perlindungan batik sebagai budaya, maka perlindungan yang diberikan oleh instrumen hukum internasional adalah perlindungan terhadap batik sebagai warisan budaya tak berwujud. Secara konsep, warisan budaya tak berwujud berkembang sejak dekade 1980-an. Sebelumnya, pada tahun 1972 UNESCO meresmikan *Convention Concerning The Protection of The World Cultural And Natural Heritage* (*World Heritage Convention* atau WHC). Dalam WHC, fokus utama dari perlindungan terhadap warisan budaya adalah budaya berupa keanekaragaman hayati, bangunan, ataupun situs bersejarah. Namun, kemudian berkembang sebuah pemahaman bahwa pengetahuan yang dimiliki oleh manusia merupakan suatu kekayaan budaya. Dalam instrumen hukum internasional, warisan budaya tak berwujud pertama kali dikembangkan dalam *1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore* dan kemudian dalam *the 2003 UNESCO Convention For The Safeguarding of the Intangible Cultural Heritage*.

1. *1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore*

1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore (Rekomendasi 1989) merupakan dokumen internasional pertama yang secara spesifik memberi perlindungan terhadap warisan budaya tak berwujud. Perlindungan ini dilahirkan karena adanya dampak negatif dari industrialisasi dan

media massa terhadap budaya tradisional.[241] Melalui rekomendasi ini, upaya perlindungan terhadap warisan budaya dilakukan karena semakin besarnya kesadaran masyarakat internasional akan pentingnya peran warisan budaya dalam membentuk masyarakat di dunia dan ancaman terhadap eksistensi warisan budaya dalam dunia yang berkembang, khususnya dalam hal ekonomi dan teknologi.[242] Dalam rekomendasi yang dikeluarkan oleh UNESCO ini, dinyatakan konsep budaya yang hidup yang merupakan esensi dari warisan budaya tak berwujud. Selain menekankan esensi dari warisan budaya tak berwujud, rekomendasi 1989 ini telah menekankan peran penting dari masyarakat tradisional dalam usaha pelestarian warisan budaya tak berwujud, karena warisan budaya tak berwujud tidak dapat hidup tanpa masyarakat pendukungnya.

Rekomendasi 1989 menekankan kepada negara anggota UNESCO untuk mengembangkan strategi perlindungan berupa konservasi terhadap budaya seperti pendokumentasian budaya, pengembangan arsip dokumen budaya, pembentukan museum, dan dukungan bagi masyarakat tradisional sebagai pihak mewariskan suatu budaya.[243] Dalam pembukaan Rekomendasi 1989,[244] ditekankan pentingnya nilai dari suatu warisan budaya. Istilah yang banyak digunakan dalam Rekomendasi 1989 adalah *folklore*. Yang dimaksud dengan folklore dalam Rekomendasi 1989 sesuai dengan yang tertuang dalam Pasal A rekomendasi 1989 adalah:

[241] Fairchild Ruggles dan Helaine Silverman *ed. Intangible Heritage Embodied*, (New York: Springer Science, 2009), hal. 8.

[242] Anthony McCann dengan James Early, Amy Horowitz, Richard Kurin, Leslie Prosterman, Anthony Seeger, dan Peter Seitel, "The 1989 Recommendation Ten Years On: Towards a Critical Analysis", http://www.folklife.si.edu/resources/Unesco/mccann.htm, diakses 10 Mei 2010.

[243] *Ibid.*

[244] Pembukaan dari *1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore* adalah:
*"**Considering** that folklore forms part of the universal heritage of humanity and that it is a powerful means of bringing together different people and social groups and of asserting their cultural identity,*
***Noting** its social, economic, cultural, and political importance, its role in the history of the people, and its place in contemporary culture,*
***Underlining** the specific nature and importance of folklore as an integral part of cultural heritage and living culture,*
***Recognizing** the extreme fragility of the traditional forms of folklore, particularly those aspects relating to oral tradition and the risk that they might be lost.."*

"The totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its form are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts".

Rekomendasi 1989 ini diadopsi sebagai jalan keluar dari perdebatan panjang dalam dunia internasional mengenai bentuk perlindungan bagi warisan budaya. Rekomendasi 1989 melingkupi tiga tujuan perlindungan terhadap warisan budaya tak berwujud yaitu (i) pengembangan program UNESCO terkait budaya tradisional setelah pengesahan rekomendasi ini, (ii) meningkatkan perhatian negara anggota terhadap program warisan budaya tak berwujud, dan (iii) memberi bantuan kepada negara anggota untuk menerapkan rekomendasi ini. Namun, dalam pelaksanaannya, Rekomendasi 1989 dipandang tidak memiliki kekuatan dan arah perlindungan yang kuat.

Kurangnya bentuk perlindungan yang diberikan oleh Rekomendasi 1989 disebabkan tidak adanya kewajiban yang mengikat bagi negara anggota untuk melaksanakan perlindungan terhadap warisan budaya. Rekomendasi 1989 juga tidak memberikan petunjuk kepada negara anggota mengenai prosedur pelaksanaan rekomendasi. Kelemahan dari rekomendasi 1989 juga disebabkan oleh adanya pertentangan akan dua arah perlindungan terhadap warisan budaya, yaitu dari sisi pendekatan budaya dan dari pendekatan kekayaan intelektual.[245] Kritik terhadap rekomendasi 1989 juga tertuju pada definisi folklor dan budaya tradisional yang tertuang dalam pasal A yang dipandang memiliki ruang lingkup yang sempit. Selanjutnya definisi folklore dipandang terlalu terfokus pada hasil produk dan kurang mencakup perlindungan terhadap nilai dan proses dari budaya.[246] Cakupan

[245] N. Aikawa-Faure, "*From the Proclamation of Masterpieces to the Convention for the Safeguarding of Intangible Cultural Heritage*" dalam *Key Issues in Cultural Heritage*, (New York: Routledge, 2009), hal. 21.

[246] *Ibid.*

perlindungan terhadap warisan budaya juga dipandang lebih fokus terhadap tindakan penelitian terhadap budaya dan peneliti budaya dan kurang mengakomodasi pihak yang terlibat langsung dalam pelaksanaan budaya seperti masyarakat tradisional.[247] Dengan kritik tajam yang ditujukan pada Rekomendasi 1989, rekomendasi ini membuka jalan bagi perkembangan pembentukan *the 2003 Convention on the Safeguarding of the Intangible Cultural Heritage*.

2. *The 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage*

Pada tahun 2003, UNESCO mengesahkan *The 2003 Convention on the Safeguarding of the Intangible Cultural Heritage* (ICHC). ICHC mulai berlaku pada tanggal 20 April 2006. Sebelum diresmikannya ICHC, terdapat beberapa isu yang diutarakan oleh para pakar internasional, di antaranya cara pelestarian dan perlindungan terhadap warisan budaya yang hidup tanpa membekukan budaya tersebut. Tujuan utama dari diresmikannya ICHC adalah sebagai jalan keluar dari permintaan masyarakat internasional untuk menanggapi ancaman terhadap warisan budaya tak berwujud. Konsep budaya yang diatur dalam ICHC, yaitu warisan budaya tak berwujud, dipandang sebagai sarana untuk mengimbangi konsep budaya dalam *World Heritage Convention* pada tahun 1972 yang dinilai terlalu berkiblat pada konsep budaya barat, khususnya Eropa. Melalui ICHC ini diharapkan nilai budaya yang dimiliki oleh negara-negara di luar kawasan Eropa memperoleh akomodasi perlindungan dalam instrumen hukum internasional.

Setelah diperkenalkan oleh Rekomendasi 1989, konsep warisan budaya tak berwujud berkembang secara pesat mengikuti perkembangan sosial dan ekonomi dunia. Pandangan bahwa nilai budaya yang memiliki nilai penting bagi masyarakat tidak hanya berupa budaya berwujud seperti monumen, tapi budaya yang masih hidup dalam masyarakat semakin gencar disuarakan oleh masyarakat internasional. ICHC merupakan instrumen hukum internasional pertama yang memiliki kekuatan hukum

[247] *Ibid.*

mengikat untuk melindungi warisan budaya tak berwujud. Konferensi umum UNESCO dalam pembukaan ICHC menekankan beberapa poin penting dalam perlindungan warisan budaya tak berwujud yang diakomodasi oleh ICHC, di antaranya adalah pentingnya warisan budaya tak berwujud sebagai dorongan utama dari keragaman budaya dan menjamin suatu pembangungan berkelanjutan, hubungan saling ketergantungan antara warisan budaya tak berwujud dengan warisan budaya berwujud, serta ancaman dari globalisasi dan transformasi sosial terhadap warisan budaya tak berwujud.[248] Berdasarkan Pasal 1 ICHC[249] dipaparkan mengenai tujuan

[248] Dalam pembukaan ICHC kembali ditekankan pentingnya suatu instrumen hukum internasional yang memiliki kekuatan hukum mengikat bagi perlindungan terhadap warisan budaya tak benda, terutama dalam menghadapi globalisasi dan dampaknya terhadap warisan budaya tak benda. Ditekankan bahwa ICHC merupakan kelanjutan bagi implementasi instrumen hukum internasional lainnya yang terkait dengan perlindungan terhadap warisan budaya. Pembukaan ICHC ini juga menekankan pentingnya peran masyarakat dalam mewariskan warisan budaya tak benda. Pembukaan ICHC ini berbunyi:
"... ***Considering*** *the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development,...*
Considering *the deep-seated interdepence between the intangible cultural heritage and the tangible cultural heritage and natural heritage,*
Recognizing *that the processes of globalization and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage,*
Being aware *of the universal will and the common concern to safeguard the intangible cultural heritage of humanity,*
Recognizing *that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and recreation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity,*
Noting *the far-reaching impact of the activities of UNESCO in establishing normative instruments for the protection of the cultural heritage...,*
Noting further *that no binding multilateral instrument as yet exists for the safeguarding of the intangible cultural heritage,*
Considering *that existing international agreements, recommendations and resolutions concerning the cultural and natural heritage need to be effectively enriched and supplemented by means of new provisions relating to the intangible cultural heritage,*
Considering *the need to build greater awareness, especially among the younger generations, of the importance of the intangible cultural heritage and of its safeguarding,...*"

[249] Pasal 1 ICHC berbunyi:
"*The purpose of this Convention are:*
a) To safeguard the intangible cultural heritage;
b) To ensure respect for the intangible cultural heritage of the communities, groups, and individuals concerned;
c) To raise awareness at the local, national, and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;
d) To provide for international cooperation and assistance

dari ICHC antara lain untuk (i) melindungi warisan budaya tak berwujud, (ii) memberi jaminan akan suatu penghargaan terhadap warisan budaya tak berwujud, (iii) meningkatkan kesadaran akan pentingnya warisan budaya tak berwujud, dan (iv) menyediakan kerjasama dan bantuan internasional dalam upaya perlindungan terhadap warisan budaya tak berwujud.

Warisan budaya tak berwujud yang termasuk dalam ruang lingkup ICHC dipaparkan pada Pasal 2 ICHC. Dalam paragraf 2 Pasal ini, warisan budaya tak berwujud diwujudkan dalam bentuk di antaranya (i) tradisi dan ekspresi lisan; (ii) pertunjukan seni; (iii) adat-istiadat masyarakat, ritual, dan perayaan tradisional; (iv) pengetahuan dan kebiasaan tentang alam dan semesta; serta (v) keterampilan tradisional. Tradisi dan ekspresi lisan yang dimaksud dalam ICHC meliputi (i) peribahasa, (ii) teka-teki, (iii) dongeng, (iv) sajak, (v) legenda, (vi) mitos, (vii) puisi, (viii) mantra, (ix) doa, (x) lagu, dan (xi) pertunjukan drama.[250] Selain bentuk perwujudan tersebut, bahasa juga dapat dikategorikan sebagai tradisi lisan karena merupakan sarana transmisi warisan budaya tak berwujud. Perlindungan terhadap tradisi dan ekspresi lisan dapat memiliki bentuk yang beragam karena sifatnya yang diwariskan dari mulut ke mulut. Oleh karena itu kelangsungan tradisi dan ekspresi lisan bergantung pada rantai transmisi yang tidak berubah dari satu generasi ke generasi berikutnya.[251] Hal terpenting dalam tindakan perlindungan terhadap tradisi dan ekspresi oral adalah peran mereka dalam masyarakat di era modern, di mana media massa menggantikan peran tradisi dan ekspresi oral tersebut.

Wujud kedua dari warisan budaya tak berwujud yang masuk ke dalam ruang lingkup ICHC adalah pertunjukan seni. Pertunjukan seni yang dimaksud dalam ICHC adalah pertunjukan seni seperti musik tradisional, tarian tradisional, pantomim, dan

[250] UNESCO (C), *"Oral Traditions and Expressions Inluding Language as a Vehicle of the Intangible Cultural Heritage,"* http://www.unesco.org/culture/ich/index.php?pg=00053, diakses 10 Juni 2010.

[251] *Ibid.*

pertunjukan teater.[252] Tapi bagi masyarakat, pertunjukan seni ini memiliki peran yang penting dalam kehidupan budaya dan umumnya merupakan bagian dari ritual tradisional. Pertunjukan seni tradisional menjadi warisan budaya tak berwujud yang dilindungi karena adanya standarisasi terhadap pertunjukan seni tradisional sehingga nilai asli dari budaya mulai ditinggalkan.[253] Salah satu sebab dari standarisasi akan pertunjukan seni tradisional adalah karena adanya peningkatan pariwisata. Dalam beberapa kasus, pertunjukan seni tradisional mengalami standarisasi karena ditujukan untuk memenuhi selera wisatawan.

Selanjutnya perwujudan warisan budaya tak berwujud dalam ICHC adalah adat-istiadat, ritual, dan perayaan tradisional. Adat-istiadat, ritual, dan perayaan tradisional masuk ke dalam ruang lingkup perlindungan berdasarkan ICHC karena ketiga wujud budaya tersebut merupakan bentuk kebiasaan masyarakat tradisional yang membentuk kehidupan dari masyarakat tersebut dan dibagi oleh anggota masyarakat yang bersangkutan.[254] Adat-istiadat, ritual, dan perayaan tradisional signifikan bagi masyarakat karena, ketiga wujud budaya ini memberi penekanan terhadap identitas anggota masyarakat yang menjalankan ritual tersebut, baik sebagai kelompok atau masyarakat secara keseluruhan.[255] Ketiga wujud budaya ini baik dilaksanakan dalam upacara khusus ataupun yang ditampilkan di depan umum menghubungkan masyarakat dengan peristiwa yang penting bagi masyarakat.[256] Dalam ICHC, kebiasaan sosial masyarakat yang secara khusus memiliki relevansi dengan masyarakat dan membantu memperkuat rasa identitas dan kontinuitas dengan masa lalu memperoleh prioritas perlindungan.[257] Pengetahuan dan kebiasaan

[252] UNESCO (D), *"Performing Arts (Such as traditional music, dance, and theater),"* http://www.unesco.org/culture/ich/index.php?pg=00054, diakses 10 Juni 2010.

[253] *Ibid.*

[254] UNESCO (E), *"Social Practices,rituals, and festive events,"* http://www.unesco.org/culture/ich/index.php?pg=00055, diakses 10 Juni 2010.

[255] *Ibid.*

[256] *Ibid.*

[257] *Ibid.*

tradisional tentang alam dan semesta yang masuk dalam ruang lingkup perlindungan ICHC diekspresikan melalui bahasa, tradisi lisan, spiritual, pandangan tradisional, ikatan emosional masyarakat pada suatu tempat, dan kenangan yang dimiliki oleh masyarakat sebagai satu-kesatuan.[258] Pengetahuan dan kebiasaan tradisional ini banyak terpengaruh dari nilai budaya dan kepercayaan masyarakat dan menjadi dasar bagi tradisi masyarakat.

Bentuk selanjutnya dari warisan budaya tak berwujud yang mendapat perlindungan dari ICHC adalah *keterampilan tradisional*. Keterampilan tradisional merupakan perwujudan warisan budaya tak berwujud yang memiliki keterkaitan yang erat dengan suatu produk budaya berwujud. Namun fokus perlindungan ICHC terhadap keterampilan tradisional bukanlah kepada produk yang dihasilkan tapi kepada dukungan kepada pengrajin tradisional untuk melanjutkan produksi kerajinan tradisional dan mewariskan pengetahuan yang dimiliki kepada anggota kelompok masyarakatnya.[259] Perlindungan terhadap pengrajin kerajinan tangan tradisional melalui ICHC dilakukan karena pada umumnya para pengrajin tradisional mengalami kesulitan dalam bersaing dengan produksi massal dari hasil kerajinan tangan tradisional yang dihasilkan perusahaan asing ataupun perusahaan dalam negeri.[260] Persaingan ini umumnya menimbulkan permasalahan bagi pengrajin tradisional karena harga yang ditawarkan oleh produsen kerajinan tradisional hasil produksi massal berada di bawah hasil kerajinan tradisional yang dibuat oleh para pengrajin tradisional.

Jika dikaitkan dengan batik Jawa sebagai warisan budaya tak berwujud maka perwujudannya dapat dilihat dari beberapa sudut pandang. Jika dilihat dari seni membatik, maka batik Jawa merupakan suatu perwujudan ritual, karena dalam proses pembuatan batik, umumnya masyarakat Jawa melakukan ritual dan doa sebelum

[258] UNESCO (F), *"Knowledge and Practices Concerning Nature of the Universe,"* http://www.unesco.org/culture/ich/index.php?pg=00056, diakses 10 Juni 2010.

[259] UNESCO(G),*"Traditional Crafmanship,"* http://www.unesco.org/culture/ich/index.php?pg=00057, diakses 10 Juni 2010.

[260] *Ibid.*

membuat sehelai kain batik. Dalam kepercayaan masyarakat Jawa, dengan melakukan ritual dan doa sebelum membatik dapat membantu menghasilkan sehelai kain batik yang indah dan memberi kekuatan kepada pengrajin batik dalam melaksanakan proses pembuatan batik yang lama.[261] Berdasarkan formulir nominasi yang diajukan oleh pemerintah Indonesia untuk mendaftarkan batik sebagai salah satu warisan budaya tak berwujud dalam *Representative List* UNESCO, batik merupakan sebuah tradisi lisan. Batik dikatakan sebagai tradisi lisan karena proses transmisi pengetahuan batik dari satu generasi ke generasi berikutnya. Sedangkan jika dilihat dari pengetahuan membuat batik, maka batik merupakan suatu keterampilan tradisional yang dimiliki oleh masyarakat Jawa. Keterampilan ini telah diwariskan secara turun-temurun dan memberi suatu identitas dan status sosial bagi masyarakat Jawa.

Perwujudan warisan budaya tak berwujud yang dilindungi oleh ICHC merupakan wujud budaya yang saling memiliki keterkaitan. Perwujudan warisan budaya tak berwujud yang satu dapat mempengaruhi perwujudan warisan budaya tak berwujud lainnya atau wujud warisan budaya tak berwujud yang berbeda dapat secara serempak menopang pelaksanaan kebudayaan masyarakat. Contohnya, melalui keterampilan tradisional yang dimiliki oleh pengrajin tradisional dapat dihasilkan produk kerajinan tangan tradisional yang digunakan dalam festival ataupun ritual dalam masyarakat. Contoh lainnya adalah wujud dari ekspresi lisan merupakan sarana penopang terlaksananya pertunjukan seni tradisional. Seperti musik tradisional yang dimainkan dalam pertunjukan seni tradisional. Seluruh perwujudan warisan budaya tak berwujud menghadapi ancaman yang sama terhadap eksistensinya dalam kehidupan masyarakat.

Ancaman utama bagi warisan budaya tak berwujud adalah (i) globalisasi, (ii) standarisasi budaya, dan (iii) kurangnya pemahaman dan apresiasi terhadap warisan budaya tak berwujud.[262] Standarisasi budaya bukanlah suatu wujud westernisasi

[261] Hasil wawancara dengan Ibu Suliantoro, pengurus Paguyuban Pecinta Batik Sekar Jagad Yogyakarta. Wawancara dilakukan pada tanggal 1 Mei 2010. *op.cit.*

[262] UNESCO (B), *op.cit.*

ataupun modernisasi budaya, tapi merupakan wujud komersialisasi budaya. Bahwa melalui proses globalisasi terjadi suatu standarisasi budaya untuk kepentingan komersial yang pada selanjutnya mengakibatkan adanya pergeseran nilai budaya. Dengan terjadinya pergeseran nilai budaya ini, maka keaslian suatu budaya dapat pudar dan pada akhirnya hilang. Standarisasi budaya ini mulai banyak ditemukan pada batik Jawa. Dengan dilatarbelakangi untuk memenuhi selera pasar, tidak sedikit produsen batik yang mulai memproduksi batik dengan motif yang dipandang sesuai dengan selera pasar tanpa mempertahankan ciri khas batik Jawa.

Globalisasi memegang posisi utama dalam ancaman terhadap warisan budaya tak berwujud. Media massa, televisi, dan internet lambat laun mengurangi peran budaya bagi masyarakat. Namun tidak berarti globalisasi selalu memiliki dampak negatif terhadap warisan budaya. Pada tahapan tertentu globalisasi dapat menjadi sarana untuk meningkatkan pemahaman akan warisan budaya tak berwujud. Contohnya melalui internet, media massa, ataupun televisi dapat menjadi sarana untuk memperkenalkan budaya nasional yang kurang memperoleh perhatian dari masyarakat pada umumnya dan menyebarkan kesadaran akan pentingnya pelestarian budaya tersebut kepada masyarakat luas.

Selain globalisasi, perubahan sosial dalam masyarakat juga memberi ancaman yang besar bagi kelangsungan warisan budaya tak benda di tengah kehidupan masyarakat. Perubahan sosial dapat menyebabkan adanya pergeseran selera masyarakat sehingga tidak jarang nilai budaya lama pudar karena tidak populer di antara masyarakat di mana budaya tersebut hidup. Urbanisasi dan industrialisasi banyak berkontribusi dalam penurunan nilai budaya yang pada tahap selanjutnya mempengaruhi kelangsungan warisan budaya tak benda. Migrasi, terutama yang dilakukan oleh generasi muda dari masyarakat dapat menyebabkan berkurangnya pelaku dari warisan budaya tak berwujud. Warisan budaya tak berwujud sangat bergantung pada masyarakat yang menjalankan budaya tersebut. Jika dalam suatu lingkungan masyarakat terjadi penurunan jumlah pelaku budaya dalam jumlah yang signifikan, maka lambat laun budaya tersebut dapat hilang karena tidak ada pihak yang melanjutkan pelaksanaan budaya tersebut. Oleh karena itu, perlindungan

terhadap warisan budaya tradisional merupakan satu-kesatuan tindakan untuk melestarikan keseluruhan perwujudan warisan budaya tak berwujud.

Bentuk perlindungan terhadap warisan budaya tak berwujud menurut UNESCO, selanjutnya dipaparkan dalam pasal 2 paragraf 3 ICHC. Pasal 2 paragraf 3 ICHC memaparkan bahwa yang dimaksud dengan perlindungan adalah langkah-langkah yang ditujukan untuk memastikan kelangsungan dari warisan budaya tak berwujud. Upaya perlindungan ini diwujudkan dalam tindakan seperti identifikasi warisan budaya tak berwujud, dokumentasi, pencatatan, penelitian, pelestarian, perlindungan, promosi akan warisan budaya tak berwujud, pewarisan warisan budaya tak berwujud, khususnya pewarisan antargenerasi, yang dilakukan melalui pendidikan formal dan non-formal serta tindakan revitalisasi berbagai aspek dari warisan budaya tak berwujud. Bentuk perlindungan ini, menurut Masanori Nagaoka[263] harus dilakukan sebagai satu-kesatuan tindakan. Artinya upaya perlindungan terhadap warisan budaya tidak dapat hanya dilakukan melalui proses dokumentasi saja. Tapi perlindungan terhadap warisan budaya dapat dikatakan telah dilakukan jika seluruh rangkaian perlindungan yang dimuat dalam pasal 2 paragraf 3 ICHC telah dilakukan. Upaya perlindungan terhadap warisan budaya tak berwujud tidak dapat diartikan secara konvensional seperti bentuk konservasi pada umumnya. Perlindungan dalam konteks ICHC dilakukan tanpa menyebabkan budaya menjadi mati, artinya perlindungan terhadap warisan budaya tak berwujud harus dilakukan dengan pendekatan yang berbeda dari perlindungan terhadap warisan budaya berwujud. Hal ini disebabkan warisan budaya tak berwujud merupakan budaya yang hidup dan secara konstan mengalami perubahan dan berkembang serta diperkaya oleh setiap generasi.[264]

Tujuan utama dari perlindungan terhadap warisan budaya tak berwujud adalah untuk menjaga keberlangsungan dari budaya tak berwujud tersebut. Agar warisan budaya tak berwujud tetap dapat hidup, maka warisan budaya tak berwujud harus

[263] Hasil wawancara dengan Masanori Nagaoka, Culture Programme Specialist, UNESCO Office Jakarta. Wawancara dilakukan pada tanggal 9 April 2010.

[264] UNESCO (B), *op. cit.*,

tetap memiliki relevansi dengan masyarakat. Perlindungan terhadap warisan budaya tak berwujud berarti menjamin bahwa warisan tersebut tetap menjadi bagian integral dalam kehidupan generasi muda dalam masyarakat, sehingga mereka dapat mewariskan budaya tersebut pada generasi selanjutnya. Perlindungan terhadap warisan budaya tak berwujud juga dapat dilakukan melalui pendekatan ekonomi, seperti pengembangan industri berbasis budaya.

Perlindungan terhadap warisan budaya tak berwujud tidak hanya diarahkan pada upaya perlindungan budaya dari ancaman yang berasal dari luar lingkungan budaya tersebut. Tapi perlindungan terhadap warisan budaya tak berwujud juga diarahkan pada perlindungan untuk memberi jaminan kepada warisan budaya untuk dapat tetap hidup. Oleh karena itu, perlindungan terhadap warisan budaya tak berwujud berdasar ICHC dilaksanakan pada tingkat (i) lokal, (ii) nasional, dan (iii) internasional. Perlindungan pada ketiga tingkat tersebut dilaksanakan secara serentak dan berfungsi untuk melengkapi satu dengan lainnya. Keterkaitan dalam ketiga tingkat perlindungan warisan budaya tak berwujud merupakan titik penting dalam ICHC. Pada tingkat lokal, perlindungan warisan budaya tak benda dilakukan oleh masyarakat dan praktisi budaya. Dilibatkannya masyarakat dan praktisi budaya dalam memberi perlindungan terhadap warisan budaya tak berwujud merupakan hal baru yang diusung oleh ICHC dalam kaitannya sebagai hukum internasional yang bergerak di bidang budaya. Peran masyarakat dalam melindungi warisan budaya tak berwujud dipaparkan dalam ICHC sebagai satu-kesatuan dengan perlindungan warisan budaya tak berwujud pada tingkat nasional yang dijalankan oleh pemerintah. Sebagai pihak yang menciptakan dan menjalankan suatu budaya, maka ICHC menempatkan masyarakat dan praktisi budaya sebagai pihak inti dalam melindungi warisan budaya tak berwujud.

Peran masyarakat dalam melindungi warisan budaya tak berwujud dipaparkan dalam beberapa Pasal ICHC, tapi melalui Pasal 15 ICHC[265] dinyatakan secara

[265] Pasal 15 ICHC berbunyi:

"*Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups amd,*

eksplisit pentingnya peran masyarakat dalam memberi perlindungan terhadap warisan budaya tak berwujud. Peran masyarakat dalam perlindungan terhadap warisan budaya tak berwujud dalam ICHC difokuskan pada suatu proses dan kondisi yang diciptakan oleh masyarakat dan tidak pada suatu produk budaya yang dihasilkan.[266] Kondisi yang harus dijaga oleh masyarakat adalah kondisi di mana warisan budaya tak berwujud dapat secara terus-menerus diciptakan, dijaga, dan diwariskan ke generasi berikutnya. Hal ini mengingat sifat warisan budaya tak berwujud yang merupakan budaya yang hidup dalam masyarakat dan merupakan budaya yang oleh masyarakat dipandang memiliki nilai signifikan dalam kehidupan mereka. Sebagai budaya yang hidup dalam masyarakat dan memiliki nilai yang penting bagi masyarakat, maka tindakan perlindungan terhadap warisan budaya tak berwujud dikembangkan dan dilakukan dengan persetujuan dari masyarakat yang memiliki budaya tersebut.[267] ICHC tidak menentukan definisi dari masyarakat. Namun, berdasarkan pertemuan para ahli dalam bidang terkait di tahun 2002 memberi definisi akan masyarakat yang menjiwai ICHC. Definisi tersebut adalah:[268]

> *"**Community**- 'People who share a self-ascribed sense of connectedness. This may be manifested, for example, in a feeling of identity or common behaviour, as well as in activities and territory. Individuals can belong to more than one community'*
> ***Cultural Community-** 'A community that distinguishes itself from other communities by its own culture or cultural design, or by a variant of the generic culture. Among other possible extensions, a nation can be a cultural community'*
> ***Culture**- 'The set of distinctive spiritual, material, intellectual and emotional features of a society or social group, encompassing, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs'."*

where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management."

[266]UNESCO (H), "*Inventorying Intangible Cultural Heritage*", http://www.unesco.org/culture/ich/index.php?pg=00080, diakses 13 Juni 2010.

[267] *Ibid.*

[268] Akagawa, *op. cit.*, hal. 61.

Pada tingkat nasional, perlindungan terhadap warisan budaya tak berwujud dilaksanakan oleh pemerintah. Namun, ICHC menyatakan bahwa perlindungan warisan budaya tak berwujud yang dilakukan pada tingkat nasional harus tetap melibatkan masyarakat dan praktisi budaya. Peran pemerintah dalam melindungi warisan budaya tak berwujud dipaparkan dalam Pasal 11-15 ICHC. Bentuk kerja sama antara pemerintah dengan masyarakat dan praktisi budaya dalam memberi perlindungan terhadap warisan budaya tak berwujud di antaranya dilakukan dalam menyusun pencatatan, dokumentasi, dan penelitian warisan budaya tak berwujud. ICHC memberi kebebasan kepada negara anggota untuk mengembangkan bentuk perlindungan terhadap warisan budaya tak berwujud yang terdapat di wilayah negara anggota. Kebebasan yang dimaksud dalam ICHC adalah bagaimana negara anggota menerjemahkan proses perlindungan yang diwajibkan untuk dilakukan dalam ICHC. Sebagai contoh, dalam ICHC negara anggota diwajibkan untuk melakukan proses pencatatan warisan budaya tak berwujud yang berada di dalam wilayah negaranya. Pelaksanaan dari proses pencatatan warisan budaya tak berwujud inilah yang dapat dilakukan sesuai dengan cara yang berbeda oleh setiap negara anggota. Kebebasan yang diberikan oleh ICHC ini dapat disebabkan oleh adanya perbedaan karakter di antara warisan budaya tak berwujud yang dimiliki oleh setiap negara anggota, sehingga proses perlindungan bukanlah suatu hal yang kaku tapi mengikuti karakter budaya yang bersangkutan agar perlindungan dapat dilaksanakan secara efektif.

Pencatatan akan warisan budaya tak berwujud penting dilakukan karena melalui proses pencatatan ini, dapat meningkatkan kesadaran akan warisan budaya tak berwujud dan pentingnya warisan budaya ini bagi setiap individu maupun masyarakat secara kolektif.[269] Sebelum dilakukan pencatatan akan warisan budaya tak berwujud, ICHC menekankan bahwa penting untuk dilakukan suatu proses identifikasi atas warisan budaya tak berwujud. Identifikasi merupakan suatu proses untuk menggambarkan elemen khusus yang terkandung dalam suatu warisan budaya tak berwujud yang membedakan suatu warisan budaya tak berwujud dengan warisan

[269] UNESCO (I), *"Inventories: Identifying for Safeguarding"*, http://www.unesco.org/culture/ich/index.php?pg=00080, diakses 17 Juni 2010.

budaya tak berwujud lainnya.[270] Dalam proses identifikasi, pemerintah wajib untuk melakukan kerja sama dengan masyarakat, kelompok individual, ataupun lembaga kemasyarakatan yang bergerak dalam budaya terkait. Seperti yang dipaparkan dalam ICHC tentang definisi dari warisan budaya tak berwujud, masyarakat merupakan pencipta dari suatu warisan budaya tak berwujud dan budaya tak berwujud hidup karena dilaksanakan oleh masyarakat sebagai bagian dari kehidupannya. Warisan budaya tak berwujud membutuhkan suatu pengakuan dari masyarakat di mana budaya tersebut hidup, karena hanya masyarakat tersebutlah yang dapat menunjuk suatu wujud budaya bagian dari kebudayaannya. Kerja sama antara pemerintah dengan masyarakat serta praktisi budaya seperti yang dipaparkan dalam Pasal 11 ICHC, dilakukan karena masyarakat dan praktisi budaya merupakan pihak yang menentukan suatu budaya tak berwujud sebagai budaya yang penting untuk dilindungi, tapi kekuasaan untuk membentuk pencatatan warisan budaya tak berwujud secara resmi berada di tangan pemerintah. Oleh karena itu, dalam perlindungan warisan budaya tak berwujud yang dilaksanakan pada tingkat nasional, pemerintah berperan untuk memberi akomodasi bagi masyarakat dan praktisi budaya dalam melindungi budaya tak berwujud yang dimiliki.

Pengaturan tentang pencatatan warisan budaya tak berwujud terdapat dalam Pasal 12 ICHC. Pencatatan warisan budaya tak berwujud harus memasukkan unsur-unsur dari warisan budaya tak berwujud agar perlindungan terhadap warisan budaya tak berwujud dapat dilaksanakan secara efektif. Pencatatan atas warisan budaya tak berwujud disusun agar dapat diakses oleh publik dengan tujuan agar meningkatkan kreatifitas masyarakat dan penghargaan terhadap warisan budaya tak berwujud yang dimiliki.[271] Dengan publikasi ini, maka masyarakat dan praktisi budaya memiliki peran yang sangat penting untuk menentukan unsur dari warisan budaya tak berwujud yang dapat dipublikasikan dan warisan budaya apa saja yang dapat dipublikasikan secara luas. Hal ini mengingat, nilai penting dari warisan budaya tak berwujud bagi

[270] *Ibid.*

[271] *Ibid.*

masyarakat dan praktisi budaya. Karena dalam prakteknya, tidak semua warisan budaya tak berwujud dapat dipublikasikan karena sifatnya yang sensitif. Dalam hal ini, ICHC memberi kebebasan kepada masyarakat dan praktisi budaya untuk tidak mempublikasikan warisan budaya tak berwujud yang tidak dikehendaki oleh masyarakat dan praktisi budaya untuk dipublikasikan. Pasal 12 ICHC menyatakan, bahwa proses perlindungan terhadap warisan budaya tak berwujud melalui pencatatan tidak berhenti setelah pencatatan dilakukan. Tapi, catatan atas warisan budaya tak berwujud yang disusun oleh pemerintah bersama masyarakat dan praktisi budaya, harus diperbarui secara berkala dan dilaporkan pada komite ICHC. Pencatatan terhadap warisan budaya tak berwujud merupakan upaya perlindungan yang dilakukan secara berkala dan tidak akan berakhir karena warisan budaya tak berwujud merupakan budaya yang terus berkembang.[272]

Selain berupa pencatatan, proses penelitian dan dokumentasi merupakan wujud perlindungan terhadap warisan budaya tak berwujud di mana kerja sama antara pemerintah dengan masyarakat dan praktisi budaya diperlukan. Dokumentasi warisan budaya tak berwujud dilakukan di antaranya melalui (i) pencatatan budaya tak berwujud dan dalam bentuk catatan ataupun rekaman atas budaya tak berwujud dan (ii) pengumpulan dokumen tentang budaya tak berwujud yang bersangkutan atau yang dokumen yang terkait dengan budaya tak berwujud tersebut.[273] Hasil dari proses dokumentasi ini, umumnya disimpan dalam museum, perpustakaan, pusat penyimpanan arsip, ataupun dimasukkan ke dalam komputer berupa data. Masyarakat dan praktisi budaya pun umumnya memiliki bentuk dan cara dokumentasi atas warisan budaya tak berwujud yang dimiliki.

Dalam upaya memberi jaminan perlindungan terhadap warisan budaya tak berwujud, Pasal 13 ICHC memberi kewajiban kepada negara untuk memberi jaminan terhadap perlindungan warisan budaya tak berwujud yang ada di dalam wilayahnya. Bentuk perlindungan ini dapat berupa (i) kebijakan pemerintah dalam meningkatkan fungsi dari warisan budaya tak berwujud dalam masyarakat, (ii) membentuk

[272] UNESCO (H), *op.cit.,*

[273] UNESCO (B), *loc.cit*

organisasi yang bertugas untuk melindungi warisan budaya tak berwujud, (iii) mendukung perkembangan penelitian yang bertujuan untuk memberi perlindungan efektif bagi warisan budaya tak berwujud, dan (iv) mengesahkan instrumen hukum yang dapat memberi akomodasi bagi perlindungan warisan budaya tak berwujud. Kewajiban negara dalam memberi perlindungan terhadap warisan budaya tak berwujud juga tertuang dalam bentuk pendidikan baik formal maupun non-formal.

Perlindungan dalam tingkat internasional terhadap warisan budaya tak berwujud, dilakukan melalui kerja sama internasional dan bantuan internasional dalam perlindungan warisan budaya tak berwujud. Kerja sama internasional dipaparkan dalam Pasal 19 ICHC. Kerja sama internasional dilakukan di antaranya melalui (i) pertukaran informasi, (ii) pengalaman dalam melakukan perlindungan warisan budaya tak berwujud, (iii) inisiatif bersama, dan (iv) pengembangan mekanisme perlindungan untuk memberi bantuan kepada negara anggota untuk melindungi wariasan budaya tak berwujud. Kerja sama internasional terutama terkait dengan proses pencatatan warisan budaya tak berwujud. Bantuan internasional untuk melindungi warisan budaya tak berwujud dipaparkan dalam Pasal 20-28 ICHC. Bantuan internasional ini salah satunya diwujudkan di antaranya melalui (i) kajian akan aspek-aspek warisan budaya tak berwujud, (ii) ketetapan akan warisan budaya tak berwujud dari parah ahli dan praktisi budaya, (iii) pelatihan pihak-pihak yang terkait dalam tindakan perlindungan dan pelestarian warisan budaya tak berwujud, (iv) penetapan standar perlindungan warisan budaya tak berwujud, (v) menciptakan dan melaksanakan infrasturktur untuk melindungi warisan budaya tak berwujud, (vi) menyediakan perangkatan dan ketrampilan untuk melindungi warisan budaya tak berwujud, serta (vii) bantuan teknis dan finansial. Untuk memberi akomodasi bagi bantuan internasional, ICHC membentuk suatu komite antarpemerintah yang memiliki fungsi utama untuk menggalakan tujuan dari ICHC dan memberi panduan dalam memberi perlindungan internasional. Bantuan internasional dalam perlindungan warisan budaya tak berwujud diberikan setelah komite antar pemerintah memberi persetujuan atas permintaan yang diajukan oleh negara anggota.

3. *2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*

Pada tahun 2005, UNESCO mengesahkan *the 2005 UNESCO Convention on the Protection And Promotion of the Diversity of Cultural Expressions* (Konvensi UNESCO 2005). Konvensi UNESCO 2005, bersama *World Heritage Convention* dan *Intangible Cultural Heritage Conventions* merupakan tiga pilar perlindungan internasional terhadap pelestarian budaya. Berbeda dengan ICHC yang memfokuskan perlindungan terhadap budaya tak berwujud, maka Konvensi UNESCO 2005 memfokuskan pada ekspresi berwujud dari budaya. Dalam konvensi ini, dipaparkan pentingnya ekspresi budaya sebagai sarana untuk pembangunan masyarakat dan pada akhirnya negara. Dalam Konvensi UNESCO 2005, ditekankan bahwa ekspresi budaya disebarkan melalui kegiatan kebudayaan, produk budaya, dan jasa, di mana ekspresi budaya ini memiliki dua unsur, yaitu unsur ekonomi dan unsur budaya.[274] Oleh karena itu, perlindungan terhadap produk budaya tidak dapat disamakan dengan perlindungan terhadap barang produksi pada umumnya.

Tujuan utama dari Konvensi UNESCO 2005 adalah untuk memperkuat lima unsur dari ekspresi budaya yaitu (i) proses kreasi, (ii) proses produksi, (iii) proses distribusi, (iv) akses terhadap budaya, dan (v) akses untuk menikmati ekspresi budaya melalui kegiatan kebudayaan, produk budaya, ataupun melalui jasa.[275] Perlindungan terhadap budaya dalam konvensi UNESCO menitikberatkan pada pelestarian, pengamanan, dan pengembangan ekspresi budaya. Lebih lanjut perlindungan terhadap budaya yang terkandung dalam Konvensi 2005 tertuju pada upaya untuk mempertahankan keberadaan ekspresi budaya dalam era globalisasi. Upaya untuk mempertahankan keberadaan ekspresi budaya ini difokuskan pada regenerasi ekspresi budaya dalam masyarakat, sehingga ekspresi budaya tidak mati sebagai budaya yang hanya tercatat atau tersimpan dalam museum ataupun dalam arsip.[276]

[274] UNESCO (J), *UNESCO World Report: Investing in Cultural Diversity and Intercultural Dialogue*, www.unesco.org/en/world-reports/cultural-diversity, diunduh 17 Juni 2010.

[275] *Ibid.*

[276] *Ibid.*,hal. 5.

Sebagai salah satu dari tiga pilar perlindungan internasional dalam pelestarian budaya, Konvensi UNESCO 2005 memiliki sasaran perlindungan yang tidak jauh berbeda dengan WHC dan ICHC. Namun, dalam Konvensi UNESCO 2005 unsur ekonomi dari ekspresi budaya mulai dipaparkan dalam pengaturan di dalam Konvensi 2005, walaupun dinyatakan bahwa unsur ekonomi dari ekspresi budaya bukan merupakan objek utama dari perlindungan yang dijalankan oleh UNESCO. Dalam pembukaan Konvensi UNESCO 2005 dipaparkan bahwa hak kekayaan intelektual memiliki peran yang penting dalam memberi perlindungan terhadap para pihak yang terlibat dalam kegiatan produksi ekspresi budaya. Kesadaran akan kaitan antara budaya dan kekayaan intelektual bukanlah hal yang baru dalam pembahasan UNESCO. Hal ini mengingat bahwa UNESCO telah melakukan kerja sama dengan WIPO dalam upaya untuk memberi perlindungan hukum bagi ekspresi budaya dalam era globalisasi. Kesadaran akan unsur kekayaan intelektual dalam ekspresi budaya ini juga terkait dengan peran ekspresi budaya bagi pembangunan terutama bagi negara berkembang.

Dengan tujuan utama dari Konvensi 2005 untuk memberi perlindungan dan pengembangan akan keberagaman ekspresi budaya, maka melalui Konvensi 2005 ini diupayakan untuk tercipta suatu kondisi di mana keragaman ekspresi budaya dapat dikembangkan dan menciptakan kondisi di mana kerja sama internasional dalam pelestarian budaya dapat dilaksanakan. Untuk mewujudkan tujuan tersebut, maka sasaran yang hendak dicapai melalui Konvensi UNESCO 2005 di antaranya adalah:[277]

1. Menciptakan kondisi di mana budaya dapat berkembang secara bebas.
2. Memberi pengakuan akan karakter kegiatan kebudayaan, produk budaya, dan jasa sebagai perwujudan jati diri masyarakat dan nilai dari budaya yang dimiliki masyarakat.
3. Mengidentifikasi peraturan baru akan kerja sama internasional

[277] *Ibid*

4. Menekankan kedaulatan setiap negara untuk menegakkan, meresmikan, dan mengimplementasikan kebijakan dan peraturan hukum terkait dengan budaya.

Pasal 2 dari Konvensi UNESCO 2005 memaparkan asas-asas yang mendasari pelaksanaan Konvensi 2005 ini. Asas-asas yang menjadi dasar bagi Konvensi UNESCO 2005 ini di antaranya (i) *principle of respect for human rights and fundamental freedoms,* (ii) *principle of sovereignty,* (iii) *principle of equal dignity of and respect for all cultures,* (iv) *principle of international solidarity and cooperation,* (v) *principle of the complementarity of economic and cultural aspects of development,* (vi) *principle of sustainable development,* (vii) *principle of equitable access,* dan (viii) *principle of openness and balance.* Berdasarkan asas tersebut, Konvensi UNESCO 2005 memberi jaminan bahwa pelaksanaan perlindungan dan pengembangan keberagaman ekspresi budaya tidak melanggar hak asasi manusia. Dalam Pasal 2 dinyatakan bahwa keberagaman budaya dapat dilindungi dan dikembangkan jika terdapat jaminan terhadap kebebasan bagi masyarakat untuk berekspresi dan adanya kebebasan bagi setiap individu untuk memilih ekspresi budaya yang merepresentasi jati dirinya. Kebebasan juga diberikan kepada negara untuk memberi perlindungan atas ekspresi budaya yang berada di dalam wilayahnya. Kebebasan yang dimiliki oleh negara ini di antaranya kebebasan untuk membentuk dan melaksanakan kebijakan yang terkait dengan perlindungan atas ekspresi budaya. Hal ini mengingat bahwa setiap ekspresi budaya memiliki karakter khas yang berbeda antara ekspresi budaya yang satu dengan ekspresi budaya lainnya. Sehingga upaya perlindungan yang diberikan harus sesuai dengan karakter yang dimiliki oleh suatu budaya agar perlindungan tersebut dapat dilaksanakan secara efektif.

4. Perlindungan Batik Sebagai Warisan Budaya dalam Hukum Nasional

Perlindungan terhadap warisan budaya di Indonesia telah dilakukan melalui konstitusi Indonesia yaitu Undang-Undang Dasar 1945. Pasal 32 Undang-Undang Dasar 1945 menyatakan bahwa “Negara memajukan kebudayaan nasional Indonesia di tengah-tengah peradaban dunia dengan memberi kebebasan kepada masyarakat

untuk memelihara dan mengembangkan nilai-nilai budayanya".[278] Dari pernyataan dalam Pasal 32 ini, dapat ditafsirkan bahwa kebudayaan Indonesia merupakan unsur penting dalam kehidupan bangsa Indonesia dan penting untuk dilestarikan dan dikembangkan. Undang-Undang Dasar 1945 melihat budaya sebagai sesuatu yang dinamis, di mana perubahan dan perkembangan budaya merupakan suatu hal yang tidak dapat dielakkan untuk terjadi.

Pelaksanaan perlindungan warisan budaya tak berwujud dalam ranah hukum nasional dilakukan melalui Peraturan Presiden No. 78 Tahun 2007 tentang Pengesahan *Convention For The Safeguarding Of The Intangible Cultural Heritage*. Melalui ratifikasi ICHC tersebut, maka terjadi transformasi hukum internasional menjadi hukum nasional Indonesia. Salah satu bentuk perlindungan budaya tidak berwujud berdasarkan ICHC adalah dengan melakukan pencatatan atau dokumentasi budaya. Dalam lingkungan nasional pencatatan terhadap budaya batik umumnya di lakukan dalam lingkungan budaya keraton. Pencatatan dalam lingkungan budaya keraton sudah berlangsung sejak lama.[279] Proses pendaftaran batik ke dalam *Representative List of Intangible Heritage of Humanity* merupakan implementasi atas disahkannya ICHC menjadi bagian dari hukum Indonesia.[280] Selanjutnya menurut Jero Wacik berdasarkan Peraturan Presiden Republik Indonesia Nomor 78 Tahun 2007 tersebut terdapat tiga makna yaitu (i) Indonesia berkomitmen untuk bergabung dengan masyarakat dunia dalam melindungi warisan budaya tak berwujud, (ii) Indonesia berkomitmen untuk melakukan upaya perlindungan aset bangsa berupa warisan budaya tak berwujud, dan (iii) Indonesia memberi ijin dan mengajak dunia

[278] Indonesia, *Undang-Undang Dasar 1945,* ps. 32. Indonesia. Undang-Undang Dasar 1945.

[279] Hasil wawancara dengan Ahdiar Romadoni, wawancara dilakukan pada 2 Maret 2010, *op.cit.,*

[280] Jero Wacik, "Kebijakan Pemerintah Terhadap Perlindungan Warisan Budaya Tak Berwujud [sic]," (makalah disampaikan pada *talk show* dan pameran "Batik Indonesia: Antara Pengakuan Internasional dan Harapan Lokal", Jakarta, Senin 23 November 2009), hal. 2.

internasional untuk ikut melestarikan warisan budaya tak berwujud di Indonesia dan warisan budaya dunia.[281]

Berdasar makna yang terkandung dalam Peraturan Presiden Republik Indonesia Nomor 78 tahun 2007 tersebut, perlu ditekankan bahwa makna dari pengakuan batik Indonesia sebagai salah satu budaya tak berwujud yang didaftarkan pada *Representative List of Intangible Heritage of Humanity* adalah bahwa batik merupakan warisan budaya milik seluruh manusia di dunia yang berasal dari Indonesia. Dengan kata lain, dengan masuknya batik ke dalam *Representative List of Intangible Heritage of Humanity* yang diperoleh oleh Indonesia adalah suatu pengakuan semata. Siapa pun dapat memanfaatkan batik, karena batik sudah menjadi milik seluruh manusia di muka bumi ini. Namun demikian, hal positif yang diperoleh dari pengakuan UNESCO tersebut adalah adanya pengakuan bahwa gaya, corak, model, dan teknik yang terdapat dalam batik adalah milik Indonesia.[282] Jero Wacik selanjutnya menyatakan bahwa dalam melalui Peraturan Presiden Republik Indonesia Nomor 78 tahun 2007 terdapat tiga makna pelestarian yaitu:[283]

1. Perlindungan

   Perlindungan berarti melindungi jenis dan bentuk warisan budaya sebagai upaya pencegahan dan penanggulangan gejala yang menimbulkan kerusakan dan kepunahan.
2. Pengembangan

   Pengembangan berarti mengembangkan jenis dan bentuk warisan budaya sebagai upaya penyebarluasan dan pendalaman serta peningkatan mutu budaya bangsa.

[281] *Ibid.,*

[282] Hasil wawancara dengan Ratna Panggabean. wawancara dilakukan pada 2 Maret 2010, *op.cit.,*

[283] Wacik, *op.cit.,*

3. Pemanfaatan

   Pemanfaatan berarti memanfaatkan warisan budaya untuk kepentingan kesejahteran masyarakat untuk kepentingan sosial, pengetahuan, pendidikan, dan ekonomi.

Upaya perlindungan pada tahap selanjutnya dalam ranah hukum nasional dilakukan melalui Perjanjian Kerjasama antara Departemen Kebudayaan dan Pariwisata dengan Departemen Hukum dan Hak Asasi Manusia No. PKS.46/KS.001/MKP/07 dan No. M-12.UM.06.07 tentang Perlindungan, Pengembangan, dan Pemanfaatan Kekayaan Intelektual Ekspresi Budaya Warisan Tradisional Milik Bangsa Indonesia. Melalui perjanjian kerjasama ini, dilakukan perlindungan hukum terhadap batik sebagai warisan budaya dan sebagai karya intelektual bangsa. Tujuan dari perjanjian kerja sama ini seperti yang tertuang dalam Pasal 1 adalah untuk memberdayakan ekspresi budaya milik bangsa Indonesia melalui perlindungan, pengembangan, dan pemanfaatan hak kekayaan intelektual. Perlu untuk digarisbawahi, bahwa terdapat suatu kesinambungan antara perlindungan warisan budaya secara internasional dan nasional yaitu perlindungan warisan budaya ditujukan untuk melestarikan kelangsungan warisan budaya. Bahwa perlindungan terhadap warisan budaya ditujukan agar ekspresi budaya tetap hidup dan tidak menjadi statis dan mati. Lebih lanjut, terdapat suatu pengakuan hubungan keterkaitan antara karakter budaya sebagai identitas bangsa di satu sisi dan sebagai hasil kekayaan intelektual yang memiliki nilai ekonomi.

E. Perlindungan Terhadap Batik Sebagai Komoditas Perdagangan dan Kekayaan Intelektual

Dalam ranah perlindungan terhadap batik sebagai hak kekayaan intelektual memiliki kaitan yang erat dengan perlindungan terhadap batik sebagai komoditas perdagangan. Pemahaman yang digunakan terkait dengan batik sebagai pengetahuan tradisional dan ekspresi budaya tradisional. Pembahasan akan perlindungan terhadap ekspresi budaya tradisional dan pengetahuan tradisional dalam forum internasional

difasilitasi oleh WIPO sebagai organisasi internasional yang bergerak dalam bidang kekayaan intelektual. Perlindungan terhadap batik melalui ranah hak kekayaan intelektual masih menuai pro dan kontra dari berbagai pihak. Hal ini disebabkan oleh adanya perbedaan karakter antara hak kekayaan intelektual konvensional dengan batik sebagai suatu warisan budaya. Perbedaan karakter ini salah satunya adalah karakter kekayaan intelektual konvensional yang lebih cenderung individual dan batik sebagai warisan budaya yang kental dengan karakter komunal. Selain adanya perbedaan karakter antara kekayaan intelektual dan warisan budaya, banyak pendapat yang menyatakan bahwa kekayaan intelektual merupakan salah satu wujud dari eksploitasi terhadap budaya.[284] Hal ini disebabkan oleh pandangan yang berlaku selama ini dalam masyarakat internasional bahwa pengetahuan tradisional bukanlah objek yang dapat diakui sebagai kekayaan intelektual.[285] Pengetahuan tradisional lebih dipandang sebagai materi dasar untuk menciptakan suatu objek.[286] Namun, di lain pihak dilakukan upaya untuk memberi perlindungan terhadap pengetahuan tradisional, karya seni, dan kerajinan sebagai kekayaan intelektual.[287] Perlindungan terhadap budaya melalui kekayaan intelektual tetap menjadi suatu pilihan bagi masyarakat tradisional karena pemahaman kekayaan intelektual memiliki daya tarik untuk menciptakan suatu perlindungan terhadap pengetahuan tradisional dari eksploitasi pihak ketiga.[288] Upaya untuk melindungi warisan budaya melalui kekayaan intelektual kemudian dilihat dengan pendekatan bahwa (i) warisan budaya dan kekayaan intelektual merupakan suatu *creation of mind* dan (ii) warisan budaya dan kekayaan intelektual memiliki potensi nilai komersial.[289]

[284] Debora J. Halbert, *Resisting Intellectual Property*, (New York: Routledge, 2005), hal.138.

[285] *Ibid.*

[286] *Ibid.*

[287] *Ibid.*

[288] *Ibid.*, hal. 139.

[289] Departemen Kebudayaan dan Pariwisata, *Tinjauan Sekilas Upaya Perlindungan Kekayaan Intelektual Atas Pengetahuan Tradisional dan Ekspresi Budaya Tradisional*, (Jakarta: Departemen Kebudayaan dan Pariwisata, 2007), hal. 13.

Upaya perlindungan terhadap batik sebagai ekspresi budaya tradisional melalui hak kekayaan intelektual di antaranya bertujuan untuk[290] (i) mencegah tindakan misapropriasi dan penyalahgunaan[291], (ii) menyediakan pembagian keuntungan,[292] (iii) mendorong pembangunan ekonomi masyarakat,[293] dan (iv) mempromosikan kepentingan nasional.[294] Perlindungan batik melalui kekayaan intelektual ini terutama ditujukan untuk mencegah tindakan misapropriasi dari pihak asing. Hal ini disebabkan karena dalam industri batik dalam negeri konsep kekayaan intelektual sulit untuk diterapkan karena seperti yang diutarakan oleh K.R.A. Hardjosoewarno bahwa industri batik merupakan industri saling mengintip. Yang dimaksud melalui pemahaman ini adalah bahwa kreasi oleh seorang individu yang merupakan anggota dari suatu masyarakat lambat laut dapat menjadi milik dari masyarakat tersebut. Bahkan seringkali menjadi suatu kreasi yang identik dengan suatu masyarakat. Oleh karena itu, perlindungan batik melalui kekayaan intelektual

[290] Peter Jaszi *et.al., Kebudayaan Tradisional: Suatu Langkah Maju untuk Perlindungan Indonesia* (Jakarta: Lembaga Studi Pers dan Pembangunan, 2009), hal.38-42.

[291] Pemahaman misapropriasi pada dasarnya mengacu pada ketidakadilan secara ekonomi bagi masyarakat tradisional sedangkan pemahaman penyalahgunaan mengacu pada ketidakadilan secara etika, penjelasan lebih lanjut dalam Peter Jaszi, *Kebudayaan Tradisional: Suatu Langkah Maju untuk Perlindungan Indonesia*(2009).

[292] Pemahaman pembagian keuntungan terkait dengan pemahaman pencegahan misapropriasi budaya. Melalui pemahaman ini masyarakat tradisional berhak untuk memperoleh keuntungan jika terdapat pihak ketiga yang memanfaatkan hasil seni milik masyarakat tradisional, penjelasan lebih lanjut dalam Peter Jaszi, *Kebudayaan Tradisional: Suatu Langkah Maju untuk Perlindungan Indonesia*(2009).

[293] Melalui pemahaman budaya dan pembangunan ekonomi masyarakat dilihat bahwa adanya hubungan saling mendukung antara budaya dan ekonomi masyarakat. Bahwa melalui budaya yang dihasilkan oleh suatu masyarakat dapat memicu pertumbuhan ekonomi masyarakat tersebut. Pembangunan ekonomi ini dapat dilakukan melalui pelabelan hasil budaya masyarakat dengan daerah asal masyarakat yang menghasilkan budaya tersebut, penjelasan lebih lanjut dalam Peter Jaszi, *Kebudayaan Tradisional: Suatu Langkah Maju untuk Perlindungan Indonesia*(2009).

[294] Perlindungan hukum terhadap budaya dalam kelanjutannya dapat memberi manfaat tidak hanya bagi masyarakat tradisional di mana budaya itu hidup, tapi pada negara sebagai satu kesatuan. Bahwa secara tidak langsung, perekonomian negara dapat ditingkatkan jika terdapat suatu perlindungan hukum terhadap budaya yang dihasilkan oleh masyarakat, penjelasan lebih lanjut dalam Peter Jaszi, *Kebudayaan Tradisional: Suatu Langkah Maju untuk Perlindungan Indonesia*(2009).

tidak hanya untuk melindungi masyarakat sebagai individu dalam industri batik, tapi lebih kepada masyarakat khususnya masyarakat Jawa secara komunal.

1. *Paris Convention for the Protection of Industrial Property* dan *Lisbon Agreement for the Protection of Appelation of Origin and their International Registration* Terkait Dengan Perlindungan Melalui Indikasi Geografis

Indikasi geografis adalah sebuah tanda yang memberi petujuk bahwa suatu benda berasal dari negara, wilayah, atau daerah tertentu dengan menunjukkan ciri khas atau karakter dari benda tersebut yang terkait dengan daerah asalnya.[295] Secara internasional, belum disepakati definisi yang pasti akan indikasi geografis. Istilah yang sering digunakan dalam perjanjian internasional pada permulaannya adalah *indikasi asal(indication of source)* dan *penamaan asal(appellation of origin)*. Indikasi asal adalah ekspresi atau tanda yang digunakan sebagai indikasi bahwa suatu produk berasal dari sebuah negara, daerah, atau tempat tertentu.[296] Indikasi asal merupakan konsep pemahaman yang luas, artinya indikasi sumber mencakup indikasi yang menunjukkan hubungan dengan suatu negara atau daerah baik secara langsung ataupun tidak langsung.[297] Selanjutnya, penamaan asal adalah penggunaan nama geografis dari negara atau daerah untuk menunjukkan karakter khusus dari suatu produk yang khas dari lingkungan geografis asal baik faktor alam, faktor manusia, atau gabungan keduanya.[298] Jika kualitas atau karakter khas suatu produk terhadap daerah asalnya hanya secara minimal terkait dengan lingkungan alamnya, maka perlindungan yang diperoleh adalah indikasi asal bukan penamaan asal.[299] Melalui

[295] International Trade Center(UNCTAD/WTO) dan WIPO, *Marketing Craft and Visual Arts: the Role of Intellectual Property-A Practical Guide* (Jeneva: WIPO Secretariat, 2003), hal. 85.

[296] WIPO (A), *op. cit.*, hal. 120.

[297] "Daphne Zografos (A),"*Geographical Indications And Socio-Economic Development",*" http://www.iqsensato.org/wp-content/uploads/2009/02/iqsensato-wp-3-zografos-dec-2008.pdf, diunduh 25 September 2010.

[298] WIPO (A), *loc.cit.*

[299] Bernard O'Connor, *"Sui Generis Protection of Geographical Indication"*, (makalah merupakan bagian dari Drake Journal of Agricultural Law, 2004), hal. 2.

pemahaman tersebut dapat disimpulkan bahwa penamaan asal merupakan bentuk khusus dari indikasi asal.

Istilah indikasi geografis merupakan istilah yang relatif baru digunakan dalam pembahasan dalam forum internasional. Indikasi geografis merupakan salah satu rezim hak kekayaan intelektual yang paling dipengaruhi oleh nilai-nilai masyarakat atau bangsa dalam suatu negara.[300] Pelaksanaan indikasi geografis ditentukan melalui hukum nasional.[301] Indikasi geografis dapat mencakup berbagai macam benda baik yang alami, hasil pertanian, ataupun benda yang dihasilkan melalui proses produksi.[302] Dalam perkembangannya, indikasi geografis tidak hanya terbatas untuk memberi perlindungan akan produk hasil pertanian. Indikasi geografis juga digunakan untuk menunjukkan karakter khas suatu produk yang disebabkan oleh faktor manusia yang terasosiasi dengan daerah asal produk tersebut.[303] Faktor manusia ini dapat berupa keahlian tertentu dan budaya.[304] Dalam perekonomian yang semakin memasuki taraf internasional, indikasi geografis dipandang memiliki nilai yang penting sebagai sarana pemasaran produk. Indikasi geografis dapat digunakan oleh produsen yang memproduksi suatu produk di daerah yang ditunjuk memiliki indikasi geografis, di mana produk yang dihasilkan oleh para produsen memiliki karakter yang sama.[305]

Perlindungan melalui indikasi geografis berupa (i) hak untuk mencegah pihak yang tidak berwenang untuk menggunakan indikasi geografis[306], (ii) melindungi

[300]Miranda Risang Ayu, *Memperbincangkan Hak Kekayaan Intelektual Indikasi Geografis,* Ed. 1 (Bandung: PT Alumni, 2006), hal. 2.

[301]"WIPO (C), *"About Geographical Indication","* http://www.wipo.int/geo_indications/en/about.html , diakses 31 Oktober 2010.

[302] *Ibid.*

[303] *Ibid.*

[304] *Ibid.*

[305] *Ibid.*

[306] WIPO (A), *op.cit.,* hal. 121. Tindakan pencegahan ini baik terhadap produk yang tidak berasal dari tempat yang ditunjuk memiliki indikasi geografis ataupun terhadap produk yang tidak memnuhi standar kualitas suatu indikasi geografis.

indikasi geografis menjadi ekspresi umum[307], (iii) melindungi citra karakter khas yang dimiliki suatu daerah terhadap produk yang dihasilkan, (iv) dan mencegah penipuan atau pengelabuan asal barang terhadap konsumen. Perlindungan terhadap indikasi geografis tidak terbatas oleh waktu. Perlindungan ini tetap berlaku selama masih terdapat kekhasan yang mengkaitkan produk dengan lingkungan geografis di mana produk tersebut dihasilkan. Berdasarkan lingkup perlindungan yang diberikan oleh indikasi geografis, perlindungan terhadap ekspresi budaya tradisional pun diupayakan melalui rezim indikasi geografis. Wacana perlindungan ekspresi budaya tradisional melalui indikasi geografis di antaranya muncul pada sesi ke-5 sidang IGC WIPO. Dalam komite antar-pemerintah ini disebutkan bahwa ekspresi budaya tradisional seperti kerajinan tangan dapat dikualifikasikan sebagai benda yang dapat dilindungi oleh indikasi geografis.[308]

Pasal 1(a)(iv) dari ketentuan substantif *WIPO Revised Provisions for the Protection of Traditional Cultural Expressions/Expressions of Folklore* dinyatakan bahwa ekspresi budaya tradisional dapat berupa benda berwujud, salah satunya adalah tekstil.[309] Ekspresi budaya tradisional dapat dilindungi oleh indikasi geografis jika mengandung kualitas yang diperlukan dalam ketentuan perlindungan indikasi geografis. Kualitas tersebut umumnya mengandung hubungan simbolis antara karya seni yang dihasilkan dengan budaya tertentu. Karya seni tersebut dapat memperoleh perlindungan indikasi geografis jika diproduksi dengan tangan, alat bantu tangan, atau peralatan mekanik selama terdapat hubungan langsung yang menunjukkan bahwa kontribusi manual dari seniman memberikan ciri khas dari hasil akhir produk budaya tersebut. Selanjutnya untuk memperoleh perlindungan melalui indikasi

[307] *Ibid.*, Jika indikasi geografis telah menjadi suatu ekspresi umum, maka produk yang dihasilkan akan kehilangan kekhasannya dan pada akhirnya akan kehilangan perlindungan hukum terhadap produk tersebut.

[308] Zografos (A), *op.cit.*,untuk penjelasan lebih lanjut lihat WIPO *"Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions"*, dokumen WIPO/GRTKF/IC/5/3, hal. 53. Dalam dokumen ini dipaparkan bahwa indikasi geografis telah digunakan oleh Portugal untuk melindungi Sulaman Madeira.

[309] *Ibid.*

geografis, produk budaya diproduksi dengan memanfaatkan bahan alami dan mengandung fitur khas yang menunjukkan nilai estetis, artistik, kreatif, nilai budaya, dekoratif, fungsional, menunjukkan simbol sosial atau religi. Lebih lanjut, produk budaya atau karya seni tersebut diciptakan dalam kelompok.[310]

Melalui pemaparan tersebut, dapat disimpulkan bahwa batik merupakan ekspresi budaya tradisional yang dapat memperoleh perlindungan melalui indikasi geografis. Batik Jawa sebagai ekspresi budaya tradisional memiliki hubungan yang kuat dengan daerah asalnya. Setiap daerah perbatikan di Jawa memberikan ciri khas yang membedakan batik yang dihasilkan antara daerah perbatikan yang satu dengan daerah perbatikan lainnya. Ciri khas yang tertuang dalam batik yang dihasilkan pada satu daerah perbatikan dapat tertuang pada motif dan warna yang terdapat pada batik. Seperti sudah dipaparkan sebelumnya, motif yang tertuang dalam batik Jawa, terutama batik Jawa pedalaman, merupakan perwujudan nilai budaya masyarakat Jawa di mana melalui motif batik tertuang simbol sosial dan kepercayaan masyarakat Jawa. Hubungan dengan lingkungan geografis pada batik Jawa pedalaman juga terletak pada hubungan antara motif batik Jawa pedalaman dengan budaya Jawa seperti seni wayang.

Batik Jawa pesisiran pun memiliki karakter khas yang merupakan perwujudan nilai estetis dan artistik. Dalam motif batik Jawa pesisiran terjadi akulturasi budaya yang menghasilkan motif batik yang khas dengan daerah perbatikan tertentu. Kekhasan pada batik Jawa juga terdapat pada warna sebuah batik. Kandungan mineral yang terdapat dalam air untuk merendam batik memberi ciri khas yang berbeda antar daerah perbatikan. Selanjutnya, menekankan pada faktor manusia yang memberikan karakter khas pada karya seni, pergerakan tangan perajin batik serta keahliannya dalam mencanting memberikan ciri khas terhadap batik Jawa. Seperti yang dikatakan Iwan Tirta bahwa setiap garis yang tertuang dalam batik dipengaruhi oleh konsentrasi dan pola pernafasan perajin batik.[311] Hal ini disebabkan seni batik

[310] *Ibid.*

[311] Iwan Tirta (A), *op.cit.*, hal. 66.

menggabungkan elemen dalam meditasi. Selanjutnya yang menjadi ciri khas batik Jawa yang terkait dengan keahlian perajin batik adalah isen-isen atau hiasan latar pada batik Jawa yang berupa titik, garis, atau kombinasi keduanya.[312] Hubungan antara karakter indikasi geografis, ekspresi budaya tradisional, dan batik dapat dilihat lebih lanjut melalui tabel sebagai berikut:

Tabel 3[313]

Karakter Indikasi Geografis, Ekspesi Budaya Tradisional, dan Batik

Karakter	**Indikasi Geografis**	**Ekspresi Budaya Tradisional**	**Batik**
Klasifikasi	Indikasi geografis memberi identifikasi produk yang dihasilkan oleh lebih dari satu produsen.	Ekspresi budaya tradsional umumnya diproduksi dalam suatu komunitas.	Batik dapat diproduksi dalam suatu komunitas batik atau diproduksi oleh individu yang merupakan anggota dari suatu komunitas.
Basis Klasifikasi	Indikasi geografis umumnya didasari oleh formula tradisional dan proses tradisional.	Ekspresi budaya tradisional diproduksi dengan menggunakan metode tradisional.	Batik diproduksi dengan metode tradisional dengan beberapa pengembangan.
Pewarisan pengetahuan antar generasi	√	√	√
Titik Penghubung	Indikasi geografis	Ekspresi budaya	Batik memiliki

[312] *Ibid.,* hal. 50.

[313] Diolah dari Zografos (A), *op. cit.*

	diberikan pada produk yang memiliki hubungan keterkaitan dengan sumber alam lokal, kondisi alam, dan lingkungan.	tradisional memiliki hubungan dengan tempat tertentu di mana suatu produk budaya dihasilkan atau dengan metode tradisional atau dengan kondisi tertentu pada suatu tempat untuk membuat suatu produk dan umumnya memiliki bahan dasar yang berasal dari sumber daya alami.	hubungan yang erat dengan budaya di mana batik dihasilkan. Hubungan ini terkait dengan budaya pendukung serta bahan alami serta kemampuan manusia.
Elemen waktu	Hubungan antara indikasi geografis dengan suatu produk membutuhkan waktu yang lama.	Penciptaan ekspresi budaya tradisional memerlukan waktu yang lama.	Batik diciptakan dan dikembangkan dalam jangka waktu yang lama dalam masyarakat Jawa.
Nilai yang terkandung	Nilai dari indikasi geografis terhubung melalui daerah asalnya.	Nilai dari ekspresi budaya tradisional terhubung kepada pengetahuan	Nilai dari batik terhubung pada suatu masyarakat yang menciptakan

		bahwa ekspresi budaya tradisional diciptakan oleh suatu masyarakat pada suatu daerah dan waktu	suatu batik.

Perlindungan hukum internasional terhadap indikasi geografis telah dilakukan melalui *Paris Convention for the Protection of Industrial Property 1883* (Konvensi Paris). Istilah yang digunakan dalam Konvensi Paris adalah indikasi asal dan penamaan asal.[314] Konsep perlindungan indikasi geografis dalam Konvensi Paris adalah pencegahan misapropriasi terhadap suatu produk. Pasal 10(1) Konvensi Paris mengatur tentang indikasi asal. Ketentuan ini menyatakan bahwa indikasi asal tidak dapat digunakan untuk menunjuk suatu lokasi geografis yang bukan menjadi asal dari suatu produk. Perlindungan indikasi geografis dalam Konvensi Paris meliputi pencegahan persaingan tidak sehat yang tertuang dalam Pasal 10bis. Pasal 10bis mengatur bahwa (i) semua produser dalam kompetisi industrial maupun komersial harus dilindungi dari praktik persaingan curang dan (ii) masyarakat umum harus dilindungi dari informasi yang menyesatkan.[315] Persaingan tidak sehat merupakan salah satu tujuan utama dilakukannya perlindungan terhadap hak kekayaan industri. Persaingan tidak sehat dalam Pasal 10bis(2) Konvensi Paris sebagai segala bentuk persaingan yang bertentangan dengan praktek jujur dalam bidang industrial atau komersil. Konvensi Paris memberi definisi yang luas akan persaingan tidak sehat agar standar yang diberikan dalam Konvensi Paris dapat mengalami perkembangan.[316]

[314] Istilah indikasi asal dan penamaan asal terdapat dalam Pasal 1(2) Konvensi Paris yang berbunyi:

"The protection of industrial property has as its objects patents, utility models, industrial designs, trademarks, service marks, trade names, indication of source or appellation of origin, and the repression of unfair competition".

[315] Ayu, *op. cit.*, hal. 18.

[316] WIPO(A), *op. cit.*, hal. 136.

Bentuk persaingan tidak sehat di antaranya berupa penampilan dari produk dan indikasi asal yang dikomersialkan.[317] Konvensi Paris, seperti Konvensi Bern menganut prinsip *national treatment* dalam pelaksanaannya, yang tertuang dalam Pasal 2 Konvensi Paris.

Setelah Konvensi Paris, perlindungan hukum terhadap indikasi geografis dalam hukum internasional dilakukan melalui *the Madrid Agreement for the Repression of False and Deceptive Indications of Source of Goods* (Perjanjian Madrid) pada tahun 1891. Perjanjian Madrid merupakan perjanjian multilateral yang berkaitan dengan manfaat ekonomi indikasi asal suatu produk.[318] Perjanjian ini mengarahkan pada pencegahan indikasi sumber yang palsu tapi juga indikasi sumber yang dapat menipu konsumen. Perlindungan indikasi geografis yang melihat faktor manusia sebagai salah satu karakter khas produk pertama kali digunakan pada *the Lisbon Agreement for the Protection of Appelation of Origini and their International Registration* (Perjanjian Lisbon).[319] Terdapat beberapa unsur dalam definisi penamaan asal dalam Perjanjian Lisbon, yaitu (i) penamaan harus berupa nama geografis negara, wilayah, atau daerah; (ii) penamaan asal harus berfungsi sebagai indikasi yang menunjukkan suatu produk berasal dari negara, wilayah, atau daerah di mana produk dihasilkan; (iii) harus ada suatu hubungan langsung antara produk dengan wilayah geografis di mana produk tersebut dihasilkan.

[317] *Ibid.*

[318] Ayu, *op.cit.,*

[319] Peraturan tentang faktor manusia sebagai salah satu penentu karakter khas penamaan asal tertuang dalam Pasal 2(1) Perjanjian Lisbon yang berbunyi:

"appellation of origin means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors."

2. *Berne Convention For The Protection of Literary And Artistic Works*

Hak Cipta adalah hak kekayaan intelektual yang memberi perlindungan kepada pencipta atas karya ciptaannya dalam bidang seni, sastra, dan ilmiah.[320] Hak cipta merupakan cabang hukum yang terkait dengan kreatifitas. Hak cipta memberi hak eksklusif kepada pencipta dan pemegang hak atas suatu hasil karya. Dalam hak cipta, terkandung hak ekonomi dan hak moral yang diberikan kepada pencipta suatu karya cipta. Hak ekonomi adalah hak yang dimiliki oleh pencipta atau pemegang hak cipta untuk mendapatkan manfaat ekonomi dari karya ciptanya.[321] Yang termasuk sebagai hak ekonomi di antaranya (i) hak untuk memproduksi karya cipta dalam segala bentuk, (ii) hak untuk mengedarkan perbanyakan karya cipta kepada publik, (iii) hak untuk menyewakan perbanyakan karya, (iv) hak untuk membuat adaptasi terhadap karya cipta, (v) hak untuk mengumumkan karya kepada publik.[322] Hak moral adalah hak yang melekat pada diri pencipta atau pelaku yang tidak dapat dihilangkan atau dihapus tanpa alasan apapun, walaupun hak cipta atau hak terkait telah dialihkan.[323] Terdapat dua jenis hak moral, yaitu:[324]

1. Hak untuk diakui sebagai pencipta

   Nama dari pencipta harus tercantum dalam suatu karya cipta, walaupun karya tersebut telab diperbanyak, diumumkan, ataupun dipamerkan di hadapan publik.

2. Hak keutuhan karya

   Hak ini berperan untuk mencegah tindakan perubahan terhadap karya cipta yang berpotensi merusak reputasi dan kehormatan pencipta.

[320] WIPO (A), *op.cit.*, hal. 42.

[321] Tomi Suryo Utomo, *Hak Kekayaan Intelektual di Era Globalisasi: Sebuah Kajian Kontemporer*. Ed.1. (Yogyakarta: Graha Ilmu, 2010), hal. 88.

[322] *Ibid.*

[323] *Ibid.*, hal. 89.

[324] *Ibid.*

Hak cipta memiliki karakter sebagai berikut:[325]

1. Hak cipta melindungi perwujudan dari sebuah ide (*fixation*)

   Melalui prinsip ini, ditekankan bahwa perlindungan hak cipta ditujukan terhadap wujud dari sebuah ide bukan terhadap ide itu sendiri. Suatu ide dapat memperoleh perlindungan hak cipta jika telah dituangkan ke dalam suatu benda yang berwujud.
2. Hak cipta memperoleh perlindungan secara otomatis

   Melalui prinsip ini perlindungan hak cipta diperoleh saat karya cipta diciptakan tanpa memerlukan suatu pendaftaran ataupun persyaratan terlebih dahulu. Prinsip ini berasal dari prinsip yang dianut dalam Konvensi Bern.
3. Hak cipta bersifat original dan pribadi

   Dalam prinsip ini ditekankan bahwa suatu karya cipta merupakan wujud ekspresi dari individu. Oleh karena itu suatu karya cipta mencerminkan kekhasan yang dimiliki oleh setiap individu. Selanjutnya, karya cipta dapat dilindungi oleh hak cipta jika karya cipta tersebut mengandung orisinalitas yang membedakan karya cipta seorang individu dengan karya cipta milik individu lainnya.
4. Prinsip *national treatment*[326]
5. Prinsip teritorialitas[327]

   Prinsip teritorialitas pada umumnya menyatakan bahwa negara tidak memiliki kompetensi untuk menentukan hukum yang berlaku bagi kegiatan yang terjadi di luar wilayahnya. Dalam konteks hak cipta, prinsip ini berdasarkan dua

[325] *Ibid.,* hal. 70-72. Karakter hak cipta yang diuraikan dalam skripsi ini adalah karakter-karakter hak cipta yang terkait dengan perlindungan hak cipta terhadap batik.

[326] Penjelasan terhadap prinsip *national treatment* dipaparkan padapenjelasan terkait dengan Konvensi Bern.

[327] Goldstein, *op. cit.,* hal. 63-64.

kepentingan yaitu kedaulatan negara dan meningkatkan perdagangan internasional.[328]

Indikasi masyarakat internasional untuk melakukan perlindungan terhadap ekspresi budaya tradisional melalui hak cipta dimulai pada Konferensi Stockholm pada tahun 1967 untuk melakukan amandemen terhadap Konvensi Bern. Indikasi ini disuarakan oleh negara-negara berkembang yang merasa tidak terakomodasi oleh standar dari perlindungan hak cipta secara internasional. Pada tahun 1971 diresmikan amandemen dari Konvensi Bern yaitu *The 1971 Paris Act of the Berne Convention* di mana terdapat suatu indikasi untuk memberi perlindungan terhadap ekspresi budaya yang dimiliki oleh masyarakat tradisional. Pada tahun 1958, Indonesia mengundurkan diri dari keanggotaan Konvensi Bern karena sebagai negara yang baru Indonesia belum memiliki undang-undang tentang kekayaan intelektual. Pada tahun 1997, sebagai kelanjutan keanggotaan Indonesia dalam WTO maka Indonesia kembali menjadi negara anggota Konvensi Bern melalui Keputusan Presiden No. 18 Tahun 1997 Tentang Pengesahan *Berne Convention For The Protection of Literary And Artistic Works*.[329] Melalui Keputusan Presiden ini, Indonesia melakukan reservasi terhadap Konvensi Bern. Reservasi ini dilakukan terhadap Pasal 33 dari Konvensi Bern.[330]

[328] Yang dimaksud dengan meningkatkan perdagangan internasional adalah hak cipta sebagai jaminan perlindungan bagi karya cipta yang dihasilkan di negara lain. Dalam hal ini daya cipta digunakan sebagai sarana untuk meningkatkan daya tarik negara dalam perdagangan internasional. Prinsip ini terkait erat dengan prinsip *national treatment.*

[329] Indonesia, *Keputusan Presiden Tentang Pengesahan Berne Convention For the Protection of Literary And Artistic Works,* Keppres No. 18 Tahun 1997, LN No. 35 Tahun 1997.

[330] Reservasi yang dilakukan oleh Indonesia terhadap Pasal 33 Konvensi Bern menyatakan bahwa:

"*The Republic of Indonesia does not consider itself bound by the provision of Article 33 (1) of the Treaty, which provides:*

> *Any dispute between two or more countries of the Union concerning the interpretationor application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the international Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union. The Republic of Indonesia takes the position that for any dispute to*

Karya yang masuk ke dalam ruang lingkup perlindungan dari Paris Act Konvensi Bern 1971 adalah karya seni dan sastra. Dalam Konvensi Bern terdapat tiga prinsip dasar yaitu:[331]

1. Prinsip *National Treatment*

   Melalui prinsip *national treatment* karya cipta dari satu negara anggota mendapat perlindungan yang sama di setiap negara anggota konvensi, sebagaimana yang diberikan kepada karya dari negaranya sendiri. Prinsip *national treatment* tertuang dalam Pasal 5 (1) Konvensi Bern.

2. Prinsip *Automatic Protection*

   Melalui prinsip *automatic protection* perlindungan terhadap suatu karya cipta diberikan secara langsung. Perlindungan ini diberikan pada saat suatu karya cipta diciptakan dan tidak membutuhkan persyaratan sebelumnya.

3. Prinsip *Independence of Protection*

   Melalui prinsip *independence of protection*, suatu karya cipta memperoleh perlindungan tanpa bergantung pada perlindungan dari negara pencipta.

Konvensi Bern tidak secara langsung memberi perlindungan terhadap ekspresi budaya tradisional. Namun, peraturan yang tertuang dalam Konvensi Bern memberi peluang kepada negara anggota untuk menentukan standar pengaturan melalui hak cipta. Melalui Pasal 2 dari konvensi ini, negara anggota diberi peluang untuk menentukan sendiri kondisi perlindungan terhadap karya seni dan sastra yang menjadi objek perlindungan Konvensi Bern.[332] Peluang ini tertuang melalui luasnya cakupan pemahaman akan karya sastra dan seni yang masuk ke dalam ruang lingkup

be reffered to the International Court of Justice for its decision, the agreement of all the Parties to the dispute shall be necessary in each individual case".

[331] Achmad Zen Umar Purba, *Hak Kekayaan Intelektual Pasca TRIPs*, cet.1, (Bandung: PT Alumni, 2005), hal. 44.

[332] Paul Goldstein, *International Copyright: Principles, Law, and Practice* (New York: Oxford University Press, 2001), hal. 25.

Konvensi Bern.[333] Dalam pasal ini, juga dinyatakan bahwa salah satu bentuk karya yang dilindungi oleh Konvensi Bern adalah karya seni berupa gambar. Unsur penting dalam Konvensi Bern adalah jaminan akan hak moral dan ekonomi bagi pencipta terhadap karya yang dihasilkan. Dalam Pasal 6bis Konvensi Bern pemegang hak cipta memiliki hak moral untuk menolak adanya bentuk distorsi, mutilasi, atau bentuk modifiksai terhadap karya cipta yang dapat merugikan pencipta.[334] Terkait dengan ekspresi budaya tradisional, Pasal 15(4) dari Konvensi Bern[335] memberi perlindungan terhadap karya seni yang tidak diketahui penciptanya. Jangka waktu perlindungan yang diberikan oleh Konvensi Bern terhadap suatu karya cipta adalah selama hidup sang pencipta hingga lima puluh tahun setelah kematian pencipta karya seni.[336] Bagi karya cipta yang tidak diketahui penciptanya, maka perlindungan melalui Konvensi Bern berlaku hingga lima puluh tahun sejak suatu karya cipta dipublikasikan.[337]

Berdasarkan peluang yang terdapat dalam Konvensi Bern, maka dapat dikatakan bahwa batik sebagai ekspresi budaya tradisional memperoleh perlindungan hak cipta secara internasional. Peraturan yang terkandung dalam Pasal 2 Konvensi Bern, di mana dinyatakan bahwa salah satu wujud karya seni yang dilindungi oleh

[333] *Ibid.,* hal. 24. Kebebasan untuk menentukan sendiri kondisi perlindungan berdasar Konvensi Bern tertuang dalam Pasal 2 Konvensi Bern 1971 yang menyatakan bahwa *"every production in the literary, scientific, and artistic domain, whatever may be the mode or form of its expression."*

[334] Pasal 6bis(1) Konvensi Bern berbunyi:

"Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation."

[335] Pasal 15(4)(a) Konvensi Bern berbunyi:

"In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall entitled to protect and enforce his rights in the countries of the Union."

[336] Peraturan tentang jangka waktu perlindungan hak cipta dalam Konvensi Bern terdapat dalam Pasal 7(1) yang menyatakan bahwa:

"The term of protection granted by this Convention shall be the life of the author and fifty years after his death."

[337] *Ibid.,* paragraph 3.

Konvensi Bern adalah karya seni berupa gambar dapat diterapkan pada batik. Penerapan ini didasarkan pada suatu pertimbangan bahwa pada suatu helai batik terdapat komposisi warna dan motif yang merupakan suatu bentuk karya seni berupa gambar.[338] Batik juga memperoleh perlindungan dalam Konvensi Bern melalui Pasal15(4) tentang perlindungan hak cipta yang tidak diketahui penciptanya. Sebagai budaya yang telah hidup dalam masyarakat Jawa selama beberapa abad, maka tidak diketahui pencipta dari motif batik Jawa. Konvensi Bern tidak berlaku secara langsung pada negara anggota. Melalui Pasal 36 dinyatakan bahwa diperlukan legislasi nasional dari negara anggota agar peraturan dalam Konvensi Bern dapat dilaksanakan.[339] Lebih lanjut, hukum nasional dapat mencakup penambahan hak ekslusif ataupun ruang lingkup perlindungan yang tidak dibahas secara mendalam dalam Konvensi Bern.[340]

Berdasar ketentuan yang terkandung dalam Konvensi Bern, hak cipta merupakan hak kekayaan intelektual yang dipandang dapat memberi perlindungan secara langsung terhadap batik melalui prinsip *automatic principle*. Konsep perlindungan hak cipta terhadap batik terkait dengan motif dari suatu batik. Namun, di lain pihak pada batik sebagai ekspresi budaya tradisional sudah tidak diketahui siapakah pencipta dari sebuah motif. Karena pada umumnya motif sebuah batik telah diturunkan secara turun-temurun oleh masyarakat dalam jangka waktu yang lama. Secara garis besar, perbandingan karakter antara hak cipta, ekspresi budaya tradisional, dan batik Jawa dapat dilihat melalui tabel sebagai berikut:

[338] Afrillyanna Purba, *Perlindungan Hukum Seni Batik Tradisional*, cet. 1, (Bandung: PT Alumni, 2009), hal. 36.

[339] Pasal 36 Konvensi Bern berbunyi:

"(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention;

(2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention."

[340] Goldstein, *op.cit.*, hal.15-16.

Tabel 4

Perbandingan Karakter Hak Cipta, Ekspresi Budaya Tradisional, dan Batik Jawa

Karakter	**Hak Cipta**	**Ekspresi Budaya Tradisional**	**Batik Jawa**
Jangka Waktu	50 tahun setelah pencipta meninggal	Tidak terbatas	Tidak terbatas
Originalitas	Memerlukan originalitas suatu karya	Umumnya tidak terdapat originalitas karena telah diturunkan secara turun-temurun	Umumnya tidak terdapat originalitas karena telah diturunkan secara turun-temurun
Pencipta	Diketahui	Umumnya tidak diketahui	Umumnya tidak diketahui
Kepemilikan	Individual	Komunal	Komunal
Wujud	Berwujud	Berwujud, tidak berwujud, atau gabungan keduanya	Berwujud

3. *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)*

Sebagai instrumen hukum internasional yang mengatur tentang perlindungan hak kekayaan intelektual dalam dunia perdagangan, TRIPs belum memberi peraturan secara khusus terhadap warisan budaya. Hal ini salah satunya disebabkan oleh karakter ekspresi budaya tradisional yang memiliki keragaman sisi. Artinya, ekspresi budaya tersebar di berbagai wilayah di dunia yang memiliki karakter berbeda satu dengan lainnya. Oleh karena itu, karena adanya perbedaan karakter dan pada selanjutnya fungsi ekspresi budaya yang berbeda-beda maka sulit untuk menghasilkan suatu instrumen hukum internasional yang dapat mengakomodasi

berbagai kepentingan dan karakter ekspresi budaya. Terlebih, jika ekspresi budaya tersebut juga berperan sebagai komoditas perdagangan.

Tidak terdapatnya bentuk perlindungan yang nyata terhadap ekspresi budaya tradisional dalam ruang lingkup TRIPs tidak berarti bahwa terdapat kekosongan perlindungan. Daphne Zografos berpendapat bahwa terdapat celah untuk perlindungan indikasi geografis terhadap ekspresi budaya tradisional melalui TRIPs.[341] Pasal 22 (1) TRIPs yang mengatur tentang indikasi geografis menyatakan bahwa indikasi geografis merupakan suatu tanda yang mengindikasi suatu produk berasal dari suatu wilayah. Tanda ini merupakan landasan untuk menentukan ciri, reputasi, atau karakter lainnya yang khas dengan daerah asal produk tersebut. Namun demikian, Pasal 22 (1) TRIPs tidak menetapkan wujud dari tanda tersebut. Daphne Zografos menyatakan bahwa yang dapat menjadi indikator bagi indikasi geografis tidak terbatas pada nama wilayah tapi indikator dapat juga dapat berupa sebuah kata yang menunjuk pada nama suatu wilayah.[342] Daphne Zografos juga menyatakan bahwa nama dari sebuah ekspresi budaya tradisional dapat digunakan sebagai tanda yang menjadi indikator untuk memperoleh indikasi geografis.[343] Lebih lanjut, istilah reputasi yang terdapat dalam TRIPs memiliki karakter yang fleksibel. Sehingga reputasi dapat diartikan sebagai faktor manusia yang menentukan hubungan antara produk dengan suatu daerah asal.[344]

Indikasi bahwa TRIPs memberi perlindungan terhadap warisan budaya terdapat dalam Pasal 9 (1) TRIPs yang menyatakan bahwa Pasal 1 hingga Pasal 21 Konvensi Bern beserta lampirannya. Berdasarkan dokumen WTO Nomor IP/C/W/15 mengenai Peraturan Pengumuman Sekertariat WTO, perlindungan terhadap *folklore* melalui TRIPs dilakukan tidak secara eksplisit. Pasal 15 (4) Konvensi Bern memberi

[341] Daphne Zografos (B), *Intellectual Property And Traditional Cultural Expressions*, (Massachusetts: Edward Elgar Publishing Limited, 2010), hal. 175.

[342] *Ibid.*

[343] *Ibid.*

[344] *Ibid.*, hal. 176.

indikasi perlindungan terhadap *folklore* dengan pernyataan bahwa setiap karya yang tidak diketahui penciptanya, tetapi diyakini bahwa pencipta karya tersebut merupakan warga negara dari negara anggota Konvensi Bern maka terhadap karya ciptaanya diberikan perlindungan oleh Konvensi Bern. Oleh karena itu, dapat disimpulkan bahwa warisan budaya merupakan karya yang masuk ke dalam ruang lingkup perlindungan oleh TRIPs.

4. Hubungan WIPO Dengan WTO

Berlakunya WTO sebagai badan yang membawahi perdagangan internasional, dan dengan diberlakukannya TRIPs sebagai instrumen hukum interasional yang mengatur tentang kekayaan intelektual dalam perdagangan internasional tidak berarti bahwa WIPO tidak memiliki peran dalam pengaturan hukum hak kekayaan intelektual. Dalam perannya dalam memberi perlindungan terhadap budaya, WIPO lebih menjalankan peran sebagai forum internasional yang mengadakan pengkajian terhadap hak kekayaan intelektual. Sebagai anak organisasi dari PBB, maka di dalam struktur WIPO terdapat berbagai ahli dalam bidang kekayaan intelektual.

Pengkajian yang dilakukan oleh WIPO membantu dalam mengembangkan sistem perlindungan hak kekayaan intelektual. Sehingga, WIPO dan WTO berjalan seirama dalam memberi perlindungan terhadap hak kekayaan intelektual. Contoh dari hubungan antara WIPO dan WTO adalah dengan pengembangan konsep perlindungan budaya melalui ruang lingkup pengetahuan tradisional. WIPO telah mengembangkan konsep pengetahuan tradisional dan ekspresi budaya tradisional dalam beberapa dekade terakhir. Selain itu, WIPO bersama UNESCO telah mengeluarkan *model provisions* sebagai paduan untuk perlindungan terhadap warisan budaya baik berupa pengetahuan tradisional ataupun ekspresi budaya tradisional. Saat ini, dalam ruang lingkup WTO telah dilakukan perlindungan terhadap pengetahuan tradisional.

Hubungan antara WIPO dan WTO dipertegas melalui *WTO-WIPO Coorperation Agreement 1995*. Melalui perjanjian ini dilakukan suatu kerja sama antara WIPO dan WTO untuk menjembatani permasalahan kekayaan intelektual yang

mungkin terjadi antara anggota masing-masing organisasi internasional tersebut. Kerja sama antara WIPO dan WTO selanjutnya berhubungan dengan akses terhadap perjanjian internasional yang dihasilkan oleh WIPO atau WTO bagi negara anggota.

F. Perlindungan Terhadap Batik Sebagai Hak Kekayaan Intelektual di Indonesia

1. Perlindungan Batik Berdasarkan Ketentuan-Ketentuan Hak Cipta

Walaupun terdapat beberapa perbedaan karakter antara hak cipta dengan batik sebagai warisan budaya, dalam ranah hukum nasional batik telah menjadi karya yang dilindungi sejak tahun 1982 melalui Undang-Undang Nomor 6 Tahun 1982 tentang Hak Cipta. Perlindungan terhadap batik dalam hukum nasional dalam perjalanannya mengalami berbagai perubahan akan pemahaman batik itu sendiri. Pasal 10 ayat (2) Undang-Undang Nomor 6 Tahun 1982 menyatakan bahwa perlindungan terhadap hasil kebudayaan rakyat yang salah satunya berupa karya seni dipelihara dan dilindungi oleh negara.[345] Pasal ini menegaskan bahwa hak cipta atas karya seni dipegang oleh negara terhadap pihak luar negeri. Dalam penjelasan Pasal 10 Undang-Undang No. 6 Tahun 1982 perlindungan hak cipta terhadap kebudayaan rakyat ditujukan untuk menghindari tindakan monopoli dan tindakan yang merusak citra kebudayaan. Undang-Undang Nomor 6 Tahun 1982 tidak menyebutkan secara spesifik bahwa batik merupakan salah satu bentuk karya seni yang dilindungi melalui hak cipta oleh negara. Pemaparan ini kemudian tertuang melalui penjelasan Undang-Undang Nomor 7 Tahun 1987 tentang Perubahan Atas Undang-Undang Nomor 6 Tahun 1982 tentang Hak Cipta.

Batik sebagai karya seni yang dilindungi oleh hak cipta dalam hukum nasional dinyatakan secara jelas melalui Pasal 11 ayat (1) huruf f Undang-Undang Nomor 7 Tahun 1987. Dalam penjelasan pasal ini, dinyatakan bahwa seni batik yang dilindungi adalah seni batik yang bukan tradisional. Penekanan terhadap batik bukan tradisional ditujukan pada motif batik. Hal ini dilihat dari penjelasan Pasal 11

[345] Indonesia, *Undang-Undang Hak Cipta*, UU No. 6 Tahun 1982, LN No. 15 Tahun 1982, TLN No.3217, Ps. 10 ayat 2.

Undang-Undang Nomor 7 Tahun 1987 bahwa batik tradisional adalah batik parang rusak, sidomukti, dan motif tradisional lainnya. Penjelasan ini menyatakan bahwa batik tradisional merupakan karya seni yang dilindungi oleh negara sebagaimana diatur dalam 10 ayat (2) Undang-Undang Nomor 6 Tahun 1982. Dari penjelasan ini, Undang-Undang Nomor 7 Tahun 1987 melindungi batik kontemporer secara terpisah dengan batik tradisional. Selanjutnya, melalui penjelasan ini dapat disimpulkan bahwa batik telah menjadi warisan budaya yang dilindungi sejak tahun 1982. Undang-Undang Hak Cipta mengalami perubahan lebih lanjut pada tahun 1997 dengan disahkannya Undang-Undang Nomor 12 Tahun 1997 tentang Perubahan Atas Undang-Undang Nomor 6 Tahun 1982 Tentang Hak Cipta Sebagaimana Telah Diubah Dengan Undang-Undang Nomor 7 Tahun 1987. Perlindungan terhadap batik tertuang dalam Pasal 11 ayat (1) huruf k Undang-Undang Nomor 12 Tahun 1997. Sama halnya dengan Undang-Undang Nomor 7 Tahun 1987, Undang-Undang Nomor 12 Tahun 1997 melihat seni batik sebagai suatu motif. Persamaan lebih lanjut terlihat dari kedua undang-undang memberi perlindungan terhadap batik kontemporer secara terpisah dengan batik tradisional. Perlindungan terhadap batik tradisional dalam Undang-Undang Nomor 12 Tahun 1997 juga menekankan perlindungan hak cipta atas batik tradisional dari pihak asing.

Pada tahun 2002, mengikuti keanggotaan Indonesia dalam WTO, dilakukan perubahan terhadap perundang-undangan tentang hak cipta dengan disahkannya Undang-Undang Nomor 19 Tahun 2002 tentang Hak Cipta(UUHC). Perlindungan terhadap warisan budaya melalui hak cipta tertuang dalam pembukaan UUHC di mana dinyatakan bahwa:

> *"...Indonesia adalah negara yang memiliki keanekaragaman etnik/suku bangsa dan budaya serta kekayaan di bidang seni dan sastra dengan pengembangan-pengembangannya yang memerlukan Hak Cipta terhadap kekayaan intelektual yang lahir dari keanekaragaman tersebut".*

Dalam penjelasan UUHC, dipaparkan pentingnya peran warisan budaya untuk meningkatakan ekonomi dan perdagangan. Oleh karena itu, warisan budaya merupakan salah satu sumber kekayaan intelektual yang dapat memperoleh perlindungan dari undang-undang. Tidak berbeda dengan undang-undang hak cipta sebelumnya, UUHC melindungi warisan budaya dan karya cipta yang tidak diketahui penciptanya melalui hak cipta di mana negara adalah pemegang hak cipta atas warisan budaya tersebut.[346] Dalam UUHC diperkenalkan istilah folklor[347] sebagai objek perlindungan hak cipta. UUHC seperti undang-undang hak cipta sebelumnya menekankan perlindungan hak cipta terhadap warisan budaya dari tindakan penyalahgunaan dari pihak asing. Hal ini sebagai penekanan bahwa perlindungan hak cipta akan warisan budaya bukanlah sebagai wujud pengekangan ekspresi. Negara sebagai pemegang hak cipta atas ekspresi budaya tradisional lebih mengarah kepada fasilitator untuk menghindari perselisihan antar anggota masyarakat.

Perlindungan terhadap batik dalam UUHC dipaparkan dalam Pasal 12 ayat (1) huruf i. Perlindungan terhadap batik dalam UUHC melihat batik sebagai sebuah motif dan batik sebagai sebuah teknik. Penjelasan Pasal 12 ayat (1) huruf i UUHC menjelaskan bahwa yang dimaksud dengan batik adalah batik yang dibuat secara konvensional. Selanjutnya dipaparkan bahwa karya seni batik mendapat perlidungan melalui hak cipta karena memiliki nilai seni pada motif atau gambar maupun komposisi warnanya. Terdapat suatu konsistensi antara perlindungan batik sebagai warisan budaya dalam UUHC dengan perlindungan ekspresi budaya tradisional dalam hukum internasional. Konsistensi ini antara lain bahwa perlindungan terhadap warisan budaya atau folklor dilakukan dengan ketentuan (i) jangka waktu perlindungan warisan budaya diberikan tanpa batas waktu; (ii) mengecualikan hasil budaya dari keharusan bentuk berwujud; dan (iii) penekanan hak moral untuk

[346] Indonesia, *Undang-Undang Hak Cipta*, UU No. 19 Tahun 2002, LN No. 85 Tahun 2002, TLN No. 4220, Ps. 10 ayat (1).

[347] Dalam pembahasan tentang kekayaan intelektual di tingkat forum internasional, istilah folklor disamakan dengan ekspresi budaya tradisonal. Penggunaan istilah folklor dalam UUHC merupakan suatu bentuk pengakuan atas pentingnya warisan budaya bagi perekonomian masyarakat. Pada undang-undang hak cipta sebelumnya warisan budaya hanya dipaparkan sebagai hasil kebudayaan rakyat.

melindungi warisan budaya dari pengrusakan budaya. Hak moral atas suatu karya cipta memperoleh penekanan lebih lanjut melalui Pasal 24 UUHC. Hak moral yang diberikan kepada pencipta dalam UUHC adalah:[348]

1. Hak untuk dicantumkan nama atau nama samaran di dalam ciptaannya;
2. Hak untuk mencegah bentuk distorsi, mutilasi atau bentuk pemotongan, perusakan, penggantian yang berhubungan dengan karya cipta yang pada akhirnya akan merusak apresiasi dan reputasi pencipta.

. Dapat dilihat bahwa ada suatu perkembangan pemaknaan batik dalam UUHC dari undang-undang hak cipta sebelumnya. Perlindungan hak cipta terhadap batik sebagai warisan budaya, dalam prakteknya belum sepenuhnya berjalan efektif. Belum efektifnya perlindungan batik sebagai hak cipta ini terkait dengan karya cipta individu yang dibedakan dengan karya cipta warisan budaya sebagai karya komunal. Menurut pendapat Oedhirjo Diran, seorang pakar batik, batik dalam prakteknya merupakan hasil inovasi berkelanjutan. Batik merupakan hasil nilai estetik dari setiap individu. Batik Jawa dengan motif tradisional pun selalu mengalami pengembangan sesuai dengan selera dari individu pembuat batik. Namun, dalam batik Jawa, inovasi terhadap motif batik tradisional ini harus dilakukan tanpa menghilangkan perpaduan motif utama batik tradisional. Sehingga inovasi yang dilakukan terhadap batik Jawa tetap memiliki ciri khas dari motif batik Jawa tradisional. Hal ini kemudian bertentangan dengan konsep originalitas yang terkandung dalam UUHC. Lebih lanjut, dalam masyarakat batik, pencipta individu tetap melihat dirinya sebagai bagian dari masyarakat di mana warisan budaya hidup. Adanya budaya saling berbagi dalam masyarakat mengakibatkan nilai individual sulit untuk diterapkan. Di lain pihak, nilai baru yang disumbangkan setiap individu dalam batik tradisional memperoleh jaminan perlindungan dari UUHC. Hal ini didasari bahwa UUHC menganut prinsip *automatic protection* dalam melindungi karya cipta yang tertuang dalam 35 UUHC. Berdasar Pasal 35, bukanlah suatu keharusan bagi pencipta karya cipta untuk mendaftarkan

[348] Eddy Damian *et. al., Hak Kekayaan Intelektual Suatu Pengantar*, cet.5, (Bandung: PT Alumni, 2006), hal. 118.

karya ciptanya. Suatu karya cipta yang telah diciptakan secara langsung memperoleh perlindungan dari UUHC. Jangka waktu perlindungan terhadap warisan budaya dalam Pasal 31 ayat (1) huruf a UUHC tidak terbatas oleh waktu. Perlindungan terhadap batik sebagai ciptaan baru berdasar Pasal 31 ayat (1) huruf b hanya memperoleh perlindungan hak cipta selama lima puluh tahun sejak diketahui pertama kali oleh umum. Jangka waktu perlindungan terhadap karya baru batik dalam UUHC tidak mencakup perlindungan terhadap unsur tradisional dari karya tersebut.

Perlindungan terhadap batik sebagai warisan budaya melalui hak cipta dalam UUHC masih menimbulkan ketidakjelasan dalam pelaksanaannya. Masih terdapat limitasi akan perlindungan yang diberikan UUHC terhadap batik sebagai warisan budaya. Salah satu permasalahan yang masih terbuka dalam perlindungan batik sebagai warisan budaya melalui UUHC terkait dengan bentuk distribusi royalti yang diberikan kepada masyarakat dan perlindungan batik sebagai warisan budaya dari pihak asing.[349] Seperti yang telah dijelaskan sebelumnya, perlindungan terhadap batik sebagai warisan budaya melalui hak cipta terutama ditujukan terhadap penyalahgunaan oleh pihak asing. Bahwa tindakan komersialisasi tanpa izin terhadap motif tradisional yang dilakukan oleh pihak di luar anggota masyarakat merupakan salah satu tindakan pelanggaran terhadap hak cipta atas warisan budaya. Sebagai contoh, tindakan penyalahgunaan secara komersial terhadap ekpresi budaya tradisional dapat dilakukan dengan memproduksi tekstil tradisional oleh pihak asing dengan memanfaatkan individu yang berasal dari masyarakat pemilik budaya tersebut.[350] Bentuk penyalahgunaan ini akan menghasilkan tekstil tiruan yang mengandung unsur-unsur tradisional dari produk budaya asli.[351] Dalam hal batik, penyalahgunaan ini dapat terjadi jika motif tradisional batik diproduksi sebagai tekstil dengan motif batik oleh pihak asing yang memiliki kualitas di bawah batik sebagai

[349] Christoph Antons, "*Traditional Knowledge and Intellectual Property Rights in Australia adn Southeast Asia*" dalam *New Frontiers of Intellectual Property Law: IP and Cultural Heritage-Geographical Indications-Enforcement-Overprotection*, (Portland: Hart Publishing, 2005), hal. 49.

[350] Jaszi, *et.al., op. cit.*, hal. 104.

[351] *Ibid.,* hal. 105.

produk budaya asli. Hak cipta dapat berperan untuk melindungi masyarakat dari tindakan penyalahgunaan tersebut. Hak cipta dapat dimanfaatkan jika masyarakat dan pencipta individu dalam komunitas masyarakat bekerja sama untuk mengajukan perlawanan terhadap pihak asing yang melakukan penyalahgunaan budaya.[352] Hal ini dapat dilakukan karena hak cipta, walaupun pada umumnya melindungi hak individu, dalam prakteknya memiliki tujuan untuk melindungi karya cipta dari tindakan eksploitasi dan penyalahgunaan karya cipta baru sebagai satu kesatuan termasuk unsur tradisional yang terkandung di dalam karya cipta tersebut.[353]

Perlindungan terhadap batik sebagai kekayaan intelektual yang mengacu pada Undang-Undang Nomor 19 Tahun 2002 pada tahap selanjutnya adalah perlindungan batik melalui Batikmark. Perlindungan melalui batikmark diatur dalam Peraturan Menteri Perindustrian Republik Indonesia Nomor 74/M-IND/PER/9/2007 tentang Penggunaan Batikmark "batik Indonesia" pada Batik Buatan Indonesia. Batikmark merupakan suatu standarisasi mutu batik buatan Indonesia yang dilakukan dengan memberi tanda berupa kata "batik Indonesia". Penggunaan batikmark ditujukan untuk menjamin mutu batik Indonesia. Melalui batikmark perlindungan tidak hanya diberikan bagi produsen tapi juga pada konsumen batik. Penggunaan batikmark untuk melindungi batik dari beredarnya produk imitasi batik sudah lama disuarakan oleh Iwan Tirta.

Secara konsep, batikmark memiliki persamaan dengan woolmark yang telah diakui secara internasional. Sasaran utama dari perlindungan berupa standarisasi batik ini adalah mencegah persebaran produk imitasi batik sebagai batik dalam masyarakat. Seperti sudah disebutkan sebelumnya, produk imitasi batik dapat mematikan batik, baik sebagai warisan budaya ataupun sebagai komoditas perdagangan. Batikmark memiliki potensi untuk memberi perlindungan terhadap batik. Namun demikian, dalam prakteknya batikmark belum dapat memberi perlindungan efektik karena kurangnya sosialisasi batikmark pada masyarakat dan tingginya harga yang harus

[352] *Ibid.*

[353] *Ibid.*

dibayarkan untuk memperoleh sebuah batikmark. Selain itu, dilihat dari sudut pandang hukum, Peraturan Menteri Perindustrian Nomor 74 tahun 2007 yang mengacu pada Undang-Undang Nomor 19 tahun 2002 tentang Hak Cipta tidak tepat karena perbedaan karakter antara batikmark sebagai suatu tanda otentisitas dengan hak cipta.

Salah satu contoh kasus di mana hak cipta dapat digunakan untuk melindungi karya individual yang mencerminkan budaya masyarakat dari tindakan penyalahgunaan pihak asing adalah kasus *Milpurruru* melawan *Indofurn.* Yang menjadi permasalahan dalam kasus ini adalah reproduksi tanpa izin desain dalam lukisan karya seniman Aborigin untuk desain karpet oleh Indofurn, perusahaan karpet yang berbasis di Vietnam.[354] Karpet yang diproduksi oleh Indofurn kemudian dipasarkan di Australia. Para seniman Aborigin memberi izin tindakan reproduksi desain mereka hanya untuk tujuan pendidikan dan tidak untuk tindakan komersialisasi.[355] Dalam budaya Aborigin, desain yang digunakan oleh Indofurn merupakan penggambaran sebuah cerita rakyat yang suci. Bahwa sebelum desain tradisional dapat digunakan sebagai simbol suci dalam masyarakat Aborigin, seniman yang menciptakan harus mengikuti ritual tradisional. Bahwa desain tradisional tersebut diatur melalui hukum tradisional Aborigin dan penyalahgunaan terhadap desain tersebut dapat menyinggung komunitas tradisional.[356] Pada saat karpet yang diproduksi oleh Indofurn memasuki pasar Australia, George Milpurruru beserta seniman Aborigin lainnya melakukan gugatan dengan landasan pelanggaran hak cipta. Hakim yang menangani kasus ini memutuskan bahwa telah terjadi suatu pelanggaran terhadap budaya atas penyalahgunaan desain tradisional Aborigin oleh *Indofurn*. Makna dalam kasus ini adalah bahwa adanya suatu penegasan secara

[354] Jane E. Anderson, *Law, Knowledge, Culture: The Production of Indigenous Knowledge in Intellectual Property Law,* (Northampton: Edward Elgar Publishing, Inc, 2009), hal. 1 dan 131.

[355] "Christoph Beat Graber, *"Traditional Cultural Expressions in a Matrix of Copyright, Cultural Diversity and Human Rights","* http://phase1.nccr-trade.org/images/stories/publications/tce%20and%20amtrix_printedversion.pdf , diunduh 27 September 2010.

[356] *Ibid.*

hukum akan peran hak cipta terhadap hasil ekspresi budaya tradisional. Bahwa kepentingan kolektif masyarakat Aborigin memperoleh kepastian perlindungan secara hukum.[357] Melalui kasus ini, dapat disimpulkan bahwa desain inovasi yang mencitrakan budaya masyarakat sebagai komunitas dapat memperoleh perlindungan secara hukum melalui hak cipta. Hal ini menunjukkan bahwa terdapat suatu keterkaitan antara masyarakat sebagai suatu komunal dengan setiap individu yang menjadi anggota dari masyarakat tersebut. Bahwa hak moral atas suatu karya cipta memiliki peran penting dalam perlindungan hak cipta terhadap ekspresi budaya tradisional. Selain itu telah dilaksanakan suatu penafsiran akan pemahaman budaya ke dalam kerangka hukum.[358]

2. Perlindungan Batik Berdasarkan Ketentuan-Ketentuan Indikasi Geografis

Dalam hukum nasional, peraturan tentang indikasi geografis diatur dalam Undang-Undang Nomor 15 Tahun 2001 tentang Merek. Definisi indikasi geografis dalam Pasal 56 Undang-Undang Nomor 15 Tahun 2001 konsisten dengan definisi yang diberikan dalam Perjanjian Lisbon.[359] Dalam Pasal 56 ayat (1) Undang-Undang Nomor 15 Tahun 2001 dinyatakan bahwa faktor manusia memberi ciri khas pada produk yang dihasilkan. Lebih lanjut dalam penjelasan Pasal 56 ayat (1) hasil kerajinan tangan merupakan barang yang memperoleh perlindungan indikasi geografis. Perlindungan hukum terhadap indikasi geografis juga diatur dalam Peraturan Pemerintah Nomor 51 tahun 2007 tentang Indikasi Geografis. Perlindungan indikasi geografis dalam ranah hukum nasional dipandang memiliki persamaan karakter dengan perlindungan merek. Karakter perlindungan indikasi geografis di mana perlindungan ditentukan melalui hukum nasional menunjukkan bahwa batik

[357] Anderson, *op. cit.,* hal. 1.

[358] *Ibid.*

[359] Indonesia, *Undang-Undang Merek,* UU No. 15 Tahun 2001, LN No. 110 Tahun 2001, TLN No. 4131.

sebagai ekspresi budaya tradisional dapat memperoleh perlindungan melalui indikasi geografis.

Manfaat perlindungan indikasi geografis terhadap batik sebagai ekspresi budaya tradisional di antaranya (i) memberi perlindungan yang tidak dibatasi oleh waktu[360], (ii) perlindungan yang memiliki karakter yang sama dengan ekspresi budaya tradisional yaitu karakternya yang komunal, (iii) indikasi geografis dapat meningkatkan pengakuan terhadap batik terutama dalam komersialisasi batik, (iv) dapat meningkatkan signifikansi budaya, meningkatakan pengembangan masyarakat pengrajin batik, (v) memberi ciri khas pembeda di dalam pasar batik, (vi) memberi perlindungan terhadap konsumen dari produk tiruan batik yang beredar di pasaran. Contoh perlindungan indikasi geografis terhadap ekspresi budaya tradisional di antaranya adalah indikas geografis terhadap ukiran Jepara. Ukiran Jepara memperoleh perlindungan indikasi geografis pada tanggal 27 Mei 2010. Indikasi geografis terhadap ukiran Jepara ditujukan untuk menjamin kepastian hukum terkait jangka waktu perlindungan indikasi geografis. Dari sisi ekonomi, diharapkan perlindungan indikasi ukiran Jepara dapat meningkatkan peluang dan lapangan kerja.[361]

G. Pentingnya Perlindungan Hak Kekayaan Intelektual Untuk Batik Dalam Ekonomi Kreatif

Perkembangan ekonomi kreatif khususnya di Indonesia terkait dengan batik agar dapat berjalan dengan lancar memerlukan adanya perlindungan melalui ranah hukum hak kekayaan intelektual. Perlindungan terhadap batik seperti sudah dipaparkan sebelumnya tidak hanya dilakukan dari satu sisi tetapi secara serempak melalui tiga sudut pandang. Ketiga sudut pandang tersebut adalah perlindungan dari sudut pandang batik sebagai warisan budaya, batik sebagai komoditas perdagangan,

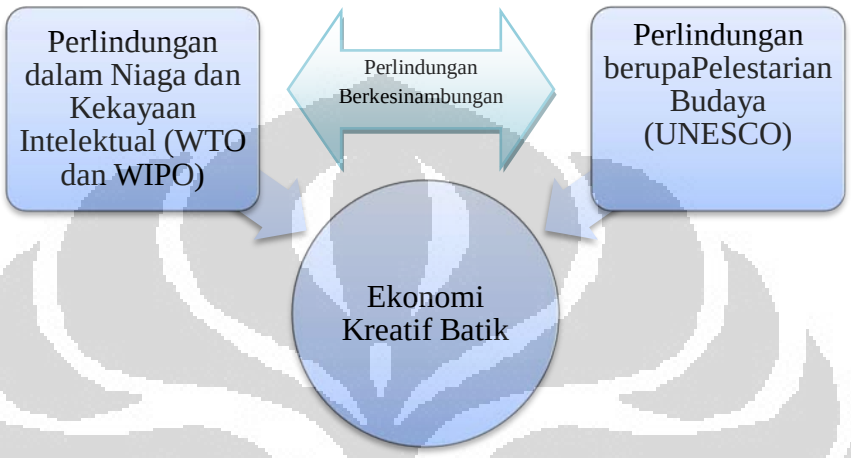
[360] Indonesia, *Peraturan Pemerintah Republik Indonesia Tentang Indikasi Geografis*, PP No. 51 Tahun 2007, LN No. 115 Tahun 2007, TLN No. 4763.

[361] "Sulismanto, "Mebel Ukir Jepara Terima Hak Indikasi Geografis"," http://www.jeparakab.go.id/index.php?option=com_content&view=article&id=611:mebel-ukir-jepara-terima-hak-indikasi-geografis&catid=44:umum&Itemid=684 , diakses 5 November 2010.

dan batik sebagai hak kekayaan intelektual. Jika digambarkan melalui bagan, maka hubungan antara ketiga sudut pandang perlindungan dengan batik sebagai ekonomi kreatif adalah sebagai berikut:

Bagan 4

Hubungan Antara Perlindungan Hukum Terhadap Batik Sebagai Ekonomi Kreatif



Perlindungan hukum melalui ranah hak kekayaan intelektual dilakukan untuk memberi jaminan keberlanjutan terhadap proses produksi batik. Keberlanjutan proses produksi batik penting untuk memperoleh jaminan karena melalui keberlanjutan proses produksi ini maka seni budaya batik dapat dilestarikan. Batik sebagai suatu budaya sangat bergantung pada masyarakat yang menunjang eksistensi batik. Jika masyarakat pendukung batik, terutama perajin batik tidak melanjutkan keberlangsungan produksi batik, maka pengakuan yang telah diberikan oleh UNESCO pun tidak akan memiliki makna yang signifikan.

Seperti yang diungkapkan oleh James leach, bahwa perlindungan terhadap produk budaya tidak hanya ditujukan pada produk itu sendiri. Tapi yang lebih utama adalah perlindungan yang ditujukan bagi pelestarian kondisi sosial dari proses kreativitas.[362] Pelestarian kondisi sosial dari proses kreativitas dapat dilakukan jika ada suatu kepastian hukum yang melindungi kekayaan intelektual. Hal ini disebabkan perlindungan kekayaan intelektual terhadap batik, khususnya melalui batikmark

[362] "Tzen Wong dan Claudia Fernandini, "*Traditional Cultural Expressions: Preservation and Innovation*"," *http://www.piipa.org/files/Book_Content/Chapter%205%20-%20IP%20and%20Human%20Development.pdf* , diakses pada 20 Juni 2012.

ataupun indikasi geografis dapat memberi jaminan otentisitas dalam perdagangan batik melalui ekonomi kreatif. Ancaman utama yang dihadapi oleh industri batik adalah beredar luasnya produk imitasi batik yang dipasarkan sebagai batik. Produk imitasi batik ini kemudian mematikan industri batik.

Menurunnya industri batik akan mengakibatkan menurunnya permintaan akan batik. Penurunan akan permintaan batik ini kemudian memberi dampak negatif bagi perajin batik karena tidak ada pemasukan ekonomi. Kebutuhan ekonomi masyarakat ini yang kemudian mendorong perajin batik di berbagai wilayah khususnya di Pulau Jawa untuk meninggalkan tradisi membatik untuk mencari penghidupan dari sektor lain. Jika para perajin tersebut meninggalkan tradisinya, maka lambat laun batik sebagai budaya akan hilang. Oleh karena itu, perlindungan kekayaan intelektual terhadap batik dalam ekonomi kreatif memiliki peran yang signifikan karena memiliki beberapa dampak positif, yaitu (i) memberi jaminan hukum terhadap batik dalam persaingan ekonomi kreatif dan (ii) memberi landasan untuk pelestarian batik sebagai warisan budaya.

BAB IV

PENUTUP

A. Kesimpulan

Berdasarkan pembahasan yang dipaparkan dalam bab-bab terdahulu, maka penulis menarik kesimpulan sebagai berikut:

1. Instrumen hukum internasional yang mengatur mengenai ekspresi budaya tradisional dan hak kekayaan intelektual secara keseluruhan belum sepenuhnya memberi perlindungan secara efektif terhadap batik Jawa sebagai warisan budaya dan komoditas perdagangan dalam dunia internasional. Instrumen hukum internasional yang berfungsi untuk memberi perlindungan terhadap batik sebagai ekspresi budaya tradisional dan komoditas perdagangan dicanangkan oleh UNESCO dan WIPO. UNESCO memberi perlindungan terhadap batik melalui *Convention for the Safeguarding of the Intangible Cultural Heritage 2003* (ICHC) dan *Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005* (Konvensi UNESCO 2005). Sedangkan, WIPO memberi perlindungan terhadap batik melalui *Paris Convention for the Protection of Industrial Property* (Konvensi Paris) dan *Berne Convention for the Protection of Literary and Artistic Works* (Kovensi Bern). Melihat fungsi batik sebagai komoditas perdagangan, maka *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs) juga merupakan instrumen hukum internasional yang menjadi acuan bagi perlindungan terhadap batik. Perlindungan terhadap batik sebagai warisan budaya melalui ICHC sudah memberi kesadaran terhadap masyarakat Indonesia akan batik. Hal ini ditunjukkan dengan meningkatnya minat masyarakat akan batik. Meningkatnya minat masyarakat akan batik ini merupakan akibat dari pengakuan UNESCO atas batik sebagai warisan

budaya tak berwujud yang berasal dari Indonesia. Pengakuan tersebut diwujudkan dengan dimasukkannya batik Indonesia ke dalam *Representative List of the Intangible Cultural Heritage of Humanity* pada 2 Oktober 2009. Namun demikian, perlindungan terhadap batik sebagai warisan budaya belum efektif dalam memberi pemahaman akan esensi dari batik kepada masyarakat Indonesia. Hal tersebut ditunjukkan dengan masih banyak masyarakat Indonesia yang tidak dapat membedakan antara batik dengan kain bermotif batik yang dipasarkan sebagai batik. Kurangnya pemahaman terhadap batik mengakibatkan perlindungan batik sebagai komoditas perdagangan yang dilihat dari sudut pandang kekayaan intelektual melalui ruang lingkup hak cipta, belum terlaksana secara efektif. Hal ini disebabkan peraturan yang dilaksanakan belum dapat mengenai sasaran perlindungan. Implementasi perlindungan atas hak cipta berdasar Konvensi Bern dan TRIPs di Indonesia diimplementasikan melalui Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta. Perlindungan terhadap batik melalui Undang-Undang Nomor 19 Tahun 2002 belum sepenuhnya berjalan efektif karena adanya perbedaan karakter antara hak cipta dengan batik sebagai produk budaya. Perbedaan karakter tersebut terletak pada limitasi jangka waktu perlindungan, konsep kepemilikan, dan orisinalitas.

2. Perlindungan hukum terhadap batik melalui instrumen WIPO dan UNESCO memberi dampak baik positif dan negatif bagi batik dalam ekonomi kreatif. Dampak positif dari instrumen hukum UNESCO bagi batik dalam ekonomi kreatif antara lain (i) meningkatnya minat masyarakat baik domestik maupun asing untuk belajar teknik membatik yang dapat mendorong sektor pariwisata, (ii) berkembangnya pusat pendidikan untuk belajar membatik, (iii) meningkatkan lapangan kerja dengan bertambahnya permintaan akan batik, (iv) mendorong inovasi baru dalam metode pembuatan batik, contohnya batik fractal, (v) mendorong penemuan bahan-bahan pewarna alami batik, dan (vi) *national branding* bagi Indonesia. Di lain pihak, dampak negatif dari instrumen hukum UNESCO bagi batik dalam ekonomi kreatif adalah semakin

maraknya peredaran imitasi batik yang disebabkan minat masyarakat terhadap batik yang tinggi tanpa disertai dengan pemahaman akan batik. Pengakuan UNESCO terhadap batik sebagai warisan budaya tak berwujud yang berasal dari Indonesia tidak memberi suatu hak eksklusif bagi masyarakat Indonesia. Hak cipta pun, tidak dapat memberi perlindungan yang menyeluruh bagi batik sebagai kekayaan intelektual. Oleh karena itu diperlukan suatu bentuk perlindungan dari rezim hak kekayaan intelektual yang dapat memberi hak eksklusif tanpa mengurangi karakter komunal batik dan tidak membatasi kreativitas.

B. Saran

Perlindungan hukum terhadap batik perlu diberikan untuk menjaga nilai budaya batik Jawa. Khususnya untuk menjaga nilai filosofi masyarakat Jawa yang terkandung dalam batik. Hak kekayaan intelektual memiliki potensi untuk memberi perlindungan hukum yang efektif terhadap batik, terutama kekayaan intelektual yang memiliki karakter *origin-related* seperti indikasi geografis. Perlindungan hukum terhadap batik tidak dapat dilakukan dengan limitasi waktu. Pemerintah juga sebaiknya menyempurnakan peraturan perundang-undangan mengenai hak kekayaan intelektual agar dapat lebih mengakomodasi perlindungan hukum terhadap batik, khususnya batik Jawa.

DAFTAR REFERENSI

I. BUKU

Koentjaraningrat. *Pengantar Ilmu Antropologi*, cet.8, (Jakarta: Rineka Cipta, 2002).

Yayasan Harapan Kita. *Indonesia Indah Buku 8 Batik*. Jakarta: Perum Percetakan Negara Republik Indonesia, 1997.

Nugroho, Irawan Djoko. *Majapahit Peradaban Maritim Ketika Nusantara Menjadi Pengendali Pelabuhan Dunia* (Jakarta: Yayasan Suluh Nuswantara Bakti, 2010).

Hitchcock, Michael. *Indonesian Textiles* (Singapura: Periplus Edition, 1991).

Roojen, Pepin Van. *Batik Design* (Amsterdam: The Pepin Press, 2001).

Hamidin, Aep S. *Batik Warisan Budaya Asli Indonesia,* cet.1 (Yogyakarta: Narasi, 2010).

Lin, Lee Chor. *Batik: Creating an Identity*. Ed.2. (Singapura: National Museum of Singapore, 2007).

Tirta, Iwan. *Batik A Play of Light and Shades*, Ed.2, (Jakarta: P.T. Gaya Favorit Press, 2009).

_____, *Batik: Sebuah Lakon.* (Jakarta: Gaya Favorit Press, 2009).

Elliott, Inger McCabe. *Batik: Fabled Cloth of Java,* Ed.2, ((Singapura: Periplus Editions, 2004).

World Intellectual Property Organization. *WIPO Intellectual Property Handbook: Policy, Law, and Uses.* Jenewa: *World Intellectual Property Organization*, 2004.

_____, *WIPO Summer School Reading Material*. 2008.

Kusumaatmadja, Mochtar dan Etty R. Agoes. *Pengantar Hukum Internasional*, Ed.2. cet.1 Bandung:PT Alumni, 2003.

Gautama, Sudargo. *Pengantar Hukum Perdata Internasional Indonesia*, (Bandung : Binacipta, 1987).

_____, *Hukum Perdata Internasional Indonesia Buku Ketiga*, (Bandung: Eresco, 1988).

_____, *Hukum Perdata Internasional Indonesia Buku Ketujuh*, (Bandung: P.T. Alumni, 2004).

_____, *Hukum Perdata Internasional Indonesia*, cet.2, (Bandung: P.T. Alumni, 1998).

_____, *Hukum Perdata Internasional Indonesia Buku Keenam*, Ed.1, cet. 3, (Bandung: P.T. Alumni, 2007).

_____, *Hukum Perdata Internasional Indonesia Buku Keempat*, ed.2, cet. 3, (Bandung: P.T. Alumni, 2007).

United Nations, *Creative Economy Report 2010, Creative Economy: A Feasible Development Option*, Jenewa: United Nations, 2010.

_____, *Creative Economy Report 2008, The Challenge of Assessing the Creative Economy: Towards Informed Policy-making*, Jenewa: *United Nations*, 2008.

Soekanto, Soeryono. *Pengantar Penelitian Hukum*, (Jakarta : UI-Press, 2008).

Tim Sanggar Batik Barcode, *Batik: Mengenal Batik dan Cara Mudah Membuat Batik*, Jakarta: Tim Sanggar Batik Barcode, 2010.

Heringa, Rems dan Harmen C. Veldhuisen, *Fabric of Enchantment: Batik from The North Coast of Java*. Los Angeles: Los Angeles County Museum of Art, 1996.

Iskandar, Neneng. *Batik Indonesia dan Sang Empu* (Jakarta: Tim Buku Srihana, 2008).

Kartika, Dharsono Sony. *Budaya Nusantara: Kajian Konsep Mandala dan Konsep Tri-Loka terhadap Pohon Hayat pada Batik Klasik*, (Bandung: Rekayasa Sains Bandung, 2007).

Departemen Perdagangan Republik Indonesia. *Pengembangan Ekonomi Kreatif Indonesia 2025, Rencana Pembangunan Ekonomi Kreatif Indonesia 2009-2015,* Jakarta: Departemen Perdagangan RI, 2008.

Brenner, Suzanne April. *The Domestication of Desire: Women Wealth, and Modernity in Java*, (New Jersey: Princeton University Press, 1998).

Riswandi, Budi Agus dan M. Syamsudin. *Hak Kekayaan Intelektual dan Budaya Hukum.* Jakarta: PT Raja Grafindo Persada, 2004.

Ruggles, Fairchild dan Helaine Silverman *ed. Intangible Heritage Embodied*, New York: Springer Science, 2009.

Departemen Kebudayaan dan Pariwisata. *Tinjauan Sekilas Upaya Perlindungan Kekayaan Intelektual Atas Pengetahuan Tradisional dan Ekspresi Budaya Tradisional.* Jakarta: Departemen Kebudayaan dan Pariwisata, 2007.

Halbert, Debora J. *Resisting Intellectual Property*, (New York: Routledge, 2005).

Peter Jaszi *et.al., Kebudayaan Tradisional: Suatu Langkah Maju untuk Perlindungan Indonesia.* Jakarta: Lembaga Studi Pers dan Pembangunan, 2009.

International Trade Center(UNCTAD/WTO) dan WIPO, *Marketing Craft and Visual Arts: the Role of Intellectual Property-A Practical Guide*. Jeneva: WIPO Secretariat, 2003.

Ayu, Miranda Risang *Memperbincangkan Hak Kekayaan Intelektual Indikasi Geografis*, Ed. 1 (Bandung: PT Alumni, 2006).

Utomo, Tomi Suryo *Hak Kekayaan Intelektual di Era Globalisasi: Sebuah Kajian Kontemporer.* Ed.1. (Yogyakarta: Graha Ilmu, 2010).

Purba, Achmad Zen Umar *Hak Kekayaan Intelektual Pasca TRIPs,* cet.1, (Bandung: PT Alumni, 2005).

Goldstein, Paul. *International Copyright: Principles, Law, and Practice* (New York: Oxford University Press, 2001).

Purba, Afrillyanna. *Perlindungan Hukum Seni Batik Tradisional*, cet. 1, (Bandung: PT Alumni, 2009).

Zografos, Daphne *Intellectual Property And Traditional Cultural Expressions*, (Massachusetts: Edward Elgar Publishing Limited, 2010).

Anderson, Jane E. *Law, Knowledge, Culture: The Production of Indigenous Knowledge in Intellectual Property Law*, (Northampton: Edward Elgar Publishing, Inc, 2009).

Antons, Christoph. "*Traditional Knowledge and Intellectual Property Rights in Australia adn Southeast Asia*" dalam *New Frontiers of Intellectual Property Law: IP and Cultural Heritage-Geographical Indications-Enforcement-Overprotection*, (Portland: Hart Publishing, 2005

Wronska-Friend, Maria. "*Javanese Batik The Art of Wax Design"* Dalam *Batik The Rudolf G. Smend Collection*. Singapura: Tuttle Publishing, 2006.

Tirta, Iwan (B). "*Quo Vadis Batik?"* Dalam *Building on Batik: The Globalization of a Craft Community*. Burlington: Ashgate Publishing Company, 2000.

Hitchcock, Michael (B) dan Wiendu Nuryanti *"Introduction"* Dalam *Building on Batik: The Globalization of a Craft Community*. Burlington: Ashgate Publishing Company, 2000.

Power, Dominic dan Allen J. Scott. "*A Prelude to Cultural Industries and the Production of Culture"* Dalam *Cultural Industries and the Production of Culture*. New York: Routledge, 2004.

Aikawa-Faure, N. "*From the Proclamation of Masterpieces to the Convention for the Safeguarding of Intangible Cultural Heritage*" Dalam *Key Issues in Cultural Heritage*. New York: Routledge, 2009.

Riswandi, Budi Agus dan M. Syamsudin. *Hak Kekayaan Intelektual dan Budaya Hukum.* (Jakarta: PT Raja Grafindo Persada, 2004).

Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, Ed. 4, (Jakarta: PT Gramedia, 2008).

II. MAKALAH

Fiona Kerlogue, "*The Role of Batik in The Creative Economy,"* Makalah disampaikan pada World Batik Summit 2011-Indonesia Global Home of Batik, Jakarta 28 September 2011.

Jero Wacik, "Kebijakan Pemerintah Terhadap Perlindungan Warisan Budaya TakBenda," Makalah disampaikan pada *talk show* dan pameran "Batik Indonesia: Antara Pengakuan Internasional dan Harapan Lokal", Jakarta, Senin 23 November 2009.

O'Connor, Bernard. "*Sui Generis Protection of Geographical Indication*", Makalah merupakan bagian dari Drake Journal of Agricultural Law, 2004.

Correa, Carlos M. "Traditional Knowledge and Intellectual Property: Issues and Options surrounding the protection of Traditional Knowledge"

Biranul Anas Zaman, "Batik-Kreativitas-Ekonomi Menanggapi Peran Batik dalam Ekonomi Kreatif," Makalah disampaikan pada *World Batik Summit 2011, Indonesia: Global Home of Batik*, Jakarta 28 September 2011.

Joel R. Paul, *Comity in International Law*, Makalah merupakan bagian dari *Harvard Law Journal*, 1991.

Akkermans, Bram dan Eveline Ramaekers, *Lex Rei Sitae In Perspective: National Developments Of A Common Rule?*, makalah merupakan bagian dari *Working Paper No. 2012/14* Maastricht European Private Law Institute, 2012.

III. PERATURAN PERUNDANG-UNDANGAN

Indonesia. Undang-Undang Dasar 1945.

Indonesia, *Undang-Undang Hak Cipta,* UU No. 19 tahun 2002, LN No.85, TLN.No. 4220.

Indonesia, *Peraturan Pemerintah Republik Indonesia Tentang Indikasi Geografis*, PP No. 51 Tahun 2007, LN No. 115 Tahun 2007, TLN No. 4763.

Indonesia, *Undang-Undang Merek*, UU No. 15 Tahun 2001, LN No. 110 Tahun 2001, TLN No. 4131.

Indonesia, *Undang-Undang Hak Cipta*, UU No. 6 Tahun 1982, LN No. 15 Tahun 1982, TLN No.3217

IV. INTERNET

ICOMOS (2003) *Indonesia Charter for Heritage Conservation.* 16 Februari 2010. http://www.international.icomos.org/charters/indonesia-charter.pdf

UNESCO, *"The Power of Culture for Development,"*. 3 November 2010. http://unesdoc.unesco.org/images/0018/001893/189382e.pdf

UNESCO Nomination Form. UNESCO Nomination Form . 19 Februari 2010. http://www.unesco.org/culture/ich/index.php?RL=00170#doc,

UNESCO-WIPO *Model Provisions* merupakan suatu panduan bagi hukum nasional negara anggota UNESCO dan WIPO untuk memberi perlindungan hukum bagi budaya. 22 Februari 2010. http://www.wipo.int/export/sites/www/tk/en/laws/pdf/unesco_wipo_1982.pdf

The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. 22 Februari 2010. http://unesdoc.unesco.org/images/0013/001325/132540e.pdf

The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression. 22 Februari 2010. http://unesdoc.unesco.org/images/0014/001429/142919e.pdf

"What Is Intellectual Property",http://www.wipo.int/tk/en/folklore/, diunduh 17 Februari 2010.

"Batik Bali, Perkawinan Motif 'Dalam' dan 'Luar'," http://belajarbatik.com/article/29206/batik-bali-perkawinan-motif-dalam-dan-luar.html, diakses 31 Maret 2010.

http://ecocrop.fao.org/ecocrop/ec_images/8410.jpg , diunduh 18 Maret 2010.

http://www.henriettesherbal.com/files/images/photos/s/sm/d04_2725_smilax-hispida.thumbnail.jpg, diunduh 18 Maret 2010.

http://www.metafro.be/prelude/prelude_pic/Morinda_citrifolia1.jpg, diunduh 18 Maret 2010.

"Andy C. Pratt, "*Baseline Study of the Cultural Industries in an International Context for Creative Compact","* http://portal.unesco.org/culture/en/files/41360/12875885065BaselineCulturalIndustries.pdf/BaselineCulturalIndustries.pdf , diunduh 20 Juni 2012.

Patricia A L Cochran, "What is Traditional Knowledge?" http://www.nativescience.org/html/traditional_knowledge.html., diakses 2 Mei 2010.

Tzen Wong dan Claudia Fernandini, "*Traditional Cultural Expressions: Preservation and Innovation","* *http://www.piipa.org/files/Book_Content/Chapter%205%20-%20IP%20and%20Human%20Development.pdf* , diakses pada 20 Juni 2012.

"Sulismanto, "Mebel Ukir Jepara Terima Hak Indikasi Geografis"," http://www.jeparakab.go.id/index.php?option=com_content&view=article&id=611:mebel-ukir-jepara-terima-hak-indikasi-geografis&catid=44:umum&Itemid=684 , diakses 5 November 2010.

"Christoph Beat Graber, "*Traditional Cultural Expressions in a Matrix of Copyright, Cultural Diversity and Human Rights","* http://phase1.nccr-trade.org/images/stories/publications/tce%20and%20amtrix_printedversion.pdf , diunduh 27 September 2010.

Daphne Zografos,"*Geographical Indications And Socio-Economic Development",*"http://www.iqsensato.org/wp-content/uploads/2009/02/iqsensato-wp-3-zografos-dec-2008.pdf, diunduh 25 September 2010.

WIPO, *"About Geographical Indication","* *http://www.wipo.int/geo_indications/en/about.html* , diakses 31 Oktober 2010.

_____, "Intellectual Property and Traditional Cultural Expressions/Folklore", http://www.wipo.int/freepublications/en/tk/913/wipo_pub_913.pdf

UNESCO, *UNESCO World Report: Investing in Cultural Diversity and Intercultural Dialogue*, www.unesco.org/en/world-reports/cultural-diversity, diunduh 17 Juni 2010.

_____, *"Inventories: Identifying for Safeguarding"*, http://www.unesco.org/culture/ich/index.php?pg=00080, diakses 17 Juni 2010.

_____, *"Inventorying Intangible Cultural Heritage*", http://www.unesco.org/culture/ich/index.php?pg=00080, diakses 13 Juni 2010.

_____,*"TraditionalCraftmanship,"*http://www.unesco.org/culture/ich/index.php?pg=00057, diakses 10 Juni 2010.

_____, *"Knowledge and Practices Concerning Nature of the Universe,"* http://www.unesco.org/culture/ich/index.php?pg=00056, diakses 10 Juni 2010.

_____, *"Social Practices,rituals, and festive events,"* http://www.unesco.org/culture/ich/index.php?pg=00055, diakses 10 Juni 2010.

_____, *"Performing Arts (Such as traditional music, dance, and theater),"* http://www.unesco.org/culture/ich/index.php?pg=00054, diakses 10 Juni 2010.

_____, "*Oral Traditions and Expressions Inluding Language as a Vehicle of the Intangible Cultural Heritage,"*http://www.unesco.org/culture/ich/index.php?pg=00053, diakses 10 Juni 2010.

_____, " Working towards a Convention", http://www.unesco.org/culture/ich/doc/src/01854-EN.pdf , diunduh pada 6 Mei 2010.

Sastroy Bangun, "50 Perusahaan Batik "mark" baru," http://waspada.co.id/index.php?option=com_content&view=article&id=211659:50-perusahaan-batik-mark-baru&catid=18:bisnis&Itemid=95, diakses 1 Juli 2012.

Anthony McCann dengan James Early, Amy Horowitz, Richard Kurin, Leslie Prosterman, Anthony Seeger, dan Peter Seitel, "The 1989 Recommendation Ten Years On: Towards a Critical Analysis", http://www.folklife.si.edu/resources/Unesco/mccann.htm, diakses 10 Mei 2010.

"Hessel E. Yntema, "*The Comity Doctrine*"," http://www.jstor.org/stable/1286930, diunduh 24 April 2010

Joel R. Paul (A), "*The Transformation of International Comity*"," http://www.law.duke.edu/journals/lcp. , diunduh 15 Juni 2012.

V. WAWANCARA

Suliantoro. (2010, Mei 1). Wawancara Personal

Hamim. (2010. Februari 11). Wawancara Personal.

Iskandar, Neneng (2010, Maret 15). Wawancara Personal.

_____, (2010, April 29). Wawancara Personal.

Kahdar, Kahfiati, (2010, Maret 2), Wawancara Personal.

Haldani, Achmad, (2010, Maret 2). Wawancara Personal.

Panggabean, Ratna, (2020, Maret 2), Wawancara Personal.

Romadoni, Ahdiar, (2010, Maret 2), Wawancara Personal.

Margried, Nancy, (2010, April 7). Wawancara Personal.

Nagaoka, Masanori, (2010, April 9), Wawancara Personal.

Priyono, Agus, (2011, April 15), Wawancara Personal.

United Nations Educational, Scientific and Cultural Organization

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 17 October to 16 November 1989 at its twenty-fifth session,

Considering that folklore forms part of the universal heritage of humanity and that it is a powerful means of bringing together different peoples and social groups and of asserting their cultural identity,

Noting its social, economic, cultural and political importance, its role in the history of the people, and its place in contemporary culture,

Underlining the specific nature and importance of folklore as an integral part of cultural heritage and living culture,

Recognizing the extreme fragility of the traditional forms of folklore, particularly those aspects relating to oral tradition and the risk that they might be lost,

Stressing the need in all countries for recognition of the role of folklore and the danger it faces from multiple factors,

Judging that the governments should play a decisive role in the safeguarding of folklore and that they should act as quickly as possible,

Having decided, at its twenty-fourth session, that the safeguarding of folklore should be the subject of a recommendation to Member States within the meaning of Article IV, paragraph 4, of the Constitution,

Adopts the present Recommendation this fifteenth day of November 1989:

The General Conference recommends that Member States should apply the following provisions concerning the safeguarding of folklore by taking whatever legislative measures or other steps may be required in conformity with the constitutional practice of each State to give effect within their territories to the principles and measures defined in this Recommendation.

The General Conference recommends that Member States bring this Recommendation to the attention of the authorities, departments or bodies responsible for matters relating to the safeguarding of folklore and to the attention of the various organizations or institutions concerned with folklore, and encourage their contacts with appropriate international organizations dealing with the safeguarding of folklore.

The General Conference recommends that Member States should, at such times and in such manner as it shall determine, submit to the Organization reports on the action they have taken to give effect to this recommendation.

A. Definition of folklore

For purposes of this Recommendation:

Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts.

B. Identification of folklore

Folklore, as a form of cultural expression, must be safeguarded by and for the group (familial, occupational, national, regional, religious, ethnic, etc.) whose identity it expresses. To this end, Member States should encourage appropriate survey research on national, regional and international levels with the aim to:

(a) develop a national inventory of institutions concerned with folklore with a view to its inclusion in regional and global registers of folklore, institutions;

(b) create identification and recording systems (collection, cataloguing, transcription) or develop those that already exist by way of handbooks, collecting guides, model catalogues, etc., in -view of the need to co ordinate the classification systems used by different institutions;

(c) stimulate the creation of a standard typology of folklore by way of:

(i) a general outline of folklore for global use;

(ii) a comprehensive register of folklore; and

(iii) regional classification of folklore, especially field-work pilot projects.

C. Conservation of folklore

Conservation is concerned with documentation regarding folk traditions and its object is, in the event of the non-utilization or evolution' of such traditions, to give researchers and tradition-bearers access to data enabling them to understand the process through which tradition changes. While living folklore, owing to its evolving character, cannot always be directly protected, folklore that has been fixed in a tangible form should be effectively protected. To this end,' Member States should:

(a) establish national archives where collected folklore can be properly stored and made available;

(b) establish a central national archive function for service purposes (central cataloguing, dissemination of information on folklore materials and standards of folklore work including the aspect of safeguarding);

(c) create museums or folklore sections at existing museums where traditional and popular culture can be exhibited;

(d) give precedence to ways of presenting traditional and popular cultures that emphasize the living or past aspects of those cultures (showing their surroundings, ways of life and the works, skills and techniques they have produced);

(e) harmonize collecting and archiving methods;

(f) train collectors, archivists, documentalists and other specialists in the conservation of folklore, from physical conservation to analytic work;

(g) provide means for. making security and working copies of all folklore materials, and copies for regional institutions, thus securing the cultural community an access to the materials.

D. Preservation of folklore

Preservation is concerned with protection of folk traditions and those who are the transmitters, having regard to the fact that each people has a right to its own culture and that its adherence to that culture is often eroded by the impact of the industrialized culture purveyed by the mass media. Measures must be taken to guarantee the status of and economic support for folk traditions both in the communities which produce them beyond. To this end, Member States should:

(a) design and introduce into both formal and out-of-school curricula the teaching and study of folklore in an appropriate manner laying particular emphasis on respect for folklore in the widest sense of the term, taking into account not only village and other rural cultures but also those created in urban areas by diverse social groups, professions, institutions, etc., and thus promoting a better understanding of cultural diversity and different world views, especially those not reflected in dominant cultures;

(b) guarantee the right of access of various cultural communities to their own folklore by supporting their work in the fields of documentation, archiving, research, etc., as well as in the practice of traditions;

(c) set up on an interdisciplinary, basis a National Folklore Council or similar co-ordinating body in which various interest groups will be represented;

(d) provide moral and economic support for individuals and institutions studying, making known, cultivating or holding items of folklore;

(e) promote scientific research relevant to the preservation of folklore.

E. Dissemination of folklore

The attention of people should be drawn to the importance of folklore as an ingredient of cultural identity. It is essential for the items that make up this cultural heritage to be widely disseminated so that the value of folklore and the need to preserve it can be recognized. However, distortion during dissemination should be avoided so that the integrity of the traditions can be safeguarded. To promote a fair dissemination, Member States should:

(a) encourage the organization of national, regional and international events such as fairs, festivals, films, exhibitions, seminars, symposia, .workshops, training courses, congresses, etc., and support the dissemination and publication of their materials, papers and other results;

(b) encourage a broader coverage of folklore material in national and regional press, publishing television, radio and other media, for instance through grants, by creating jobs for folklorists in these units, by ensuring the
proper archiving and dissemination of these folklore materials collected by the mass media, and by the establishment of departments of folklore within those organizations;

(c) encourage regions, minicipalities, associations and other groups working in folklore to establish full-time jobs for folklorists to stimulate and co-ordinate folklore activities in the region;

(d) support existing units and the creation of new units for the production of educational materials, as for example video films based on recent fieldwork, and encourage their use in schools, folklore museums, national and international folklore festivals and exhibitions;

(e) ensure the availability of adequate information on folklore through documentation centers, libraries, museums, archives, as well as through special folklore bulletins and periodicals;

(f) facilitate meetings and exchanges between individuals, groups and institutions concerned with folklore, both nationally and internationally, taking into acount bilateral cultural agreements;

(g) encourage the international scientific community to adopt a code of ethics ensuring a proper approach to and respect for traditional cultures.

F Protection of folklore

In so far as folklore constitues manifestations of intellectual creativity whether it be individual or collective, it deserves to be protected in a manner inspired by the protection provided for intellectual productions. Such protection of folklore has become indispensable as a means of promoting further development, maintenance and dissemination of those expressions,- both within and outside the country, without prejudice to related legitimate interests. Leaving aside the `intellectual property aspects' of the protection of expressions of folklore, there are various categories of rights which are already protected and should continue' to enjoy protection in the future in folklore documentation centers and archives. To this end, Member States should:

(a) regarding the `intellectual property' aspects call the attention of relevant authorities - to the important work of UNESCO and WIPO in relation to intellectual property, while recognizing that this work relates to only one aspect of folklore protection and that the need for separate action in a range of areas to safeguard folklore is urgent;

(b) regarding the other rights involved:

(i) protect the informant as the transmitter of tradition (protection of privacy and confidentiality);

(ii) protect the interest of the collector by ensuring that the materials gathered are conserved in archives in good condition and in a methodical manner;

(iii) adopt the necessary measures to safeguard the materials gathered against misuse, whether intentional or otherwise;

(iv) recognize the responsibility of archives to monitor the use made of the materials gathered.

G. International co-operation

In view of the need to intensify cultural co-operation and exchanges, in particular through the pooling of human and material resources, in order to carry out folklore development and revitalization programmes as well as research made by specialists who are the nationals of one Member State on the territory of another Member State, Member States should:

(a) co-operate with international and regional associations, institutions and organizations concerned with folklore;

(b) co-operate in the field of knowledge, dissemination and protection of folklore, in particular through:

(i) exchanges of information of every kind, exchanges of scientific and technical publications;

(ii) training of specialists, awarding of travel grants, sending of scientific and technical personnel and equipment;

(iii) the promotion of bilateral or multilateral projects in the field of the documentation of contemporary folklore;

(iv) the organization of meetings between specialists, of study courses and of working groups on particular subjects, especially on the classifying and cataloguing of folklore data and expressions and on modern methods and techniques in research;

(c) co-operate closely so as to ensure internationally that the various interested parties (communities or natural or legal persons) enjoy the economic, moral and so-called neighbouring rights resulting from the investigation, creation, composition, performance, recording and/or dissemination of folklore;

(d) guarantee Member States on whose territory research has been carried out the right to obtain from the Member States concerned, copies of all' documents, recordings, video-films, films and other material;

(e) refrain from acts likely to damage folklore materials or to diminish their value or impede their dissemination or use, whether these materials are to be found on their own territory or on the territory of other States;

(f) take necessary measures to safeguard folklore against all human and natural dangers to which it is exposed, including the risks deriving from armed conflicts, occupation of territories, or public disorders of other kinds.

MISC/2003/CLT/CH/14

CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE

Paris, 17 October 2003

CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE

The General Conference of the United Nations Educational, Scientific and Cultural Organization hereinafter referred to as UNESCO, meeting in Paris, from 29 September to 17 October 2003, at its 32nd session,

Referring to existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966,

Considering the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development, as underscored in the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, in the UNESCO Universal Declaration on Cultural Diversity of 2001, and in the Istanbul Declaration of 2002 adopted by the Third Round Table of Ministers of Culture,

Considering the deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage,

Recognizing that the processes of globalization and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage,

Being aware of the universal will and the common concern to safeguard the intangible cultural heritage of humanity,

Recognizing that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re- creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity,

Noting the far-reaching impact of the activities of UNESCO in establishing normative instruments for the protection of the cultural heritage, in particular the Convention for the Protection of the World Cultural and Natural Heritage of 1972,

Noting further that no binding multilateral instrument as yet exists for the safeguarding of the intangible cultural heritage,

Considering that existing international agreements, recommendations and resolutions concerning the cultural and natural heritage need to be effectively enriched and supplemented by means of new provisions relating to the intangible cultural heritage,

Considering the need to build greater awareness, especially among the younger generations, of the importance of the intangible cultural heritage and of its safeguarding,

Considering that the international community should contribute, together with the States Parties to this Convention, to the safeguarding of such heritage in a spirit of cooperation and mutual assistance,

Recalling UNESCO's programmes relating to the intangible cultural heritage, in particular the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity,
Considering the invaluable role of the intangible cultural heritage as a factor in bringing human beings closer together and ensuring exchange and understanding among them,
Adopts this Convention on this seventeenth day of October 2003. **I. General provisions**
Article 1 – Purposes of the Convention
The purposes of this Convention are:
(a) to safeguard the intangible cultural heritage;
(b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;
(c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;
(d) to provide for international cooperation and assistance.
Article 2 – Definitions
For the purposes of this Convention,
1. The "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.
2. The "intangible cultural heritage", as defined in paragraph 1 above, is manifested inter alia in the following domains:
(a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
(b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship.
-3-
3. "Safeguarding" means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.
4. "States Parties" means States which are bound by this Convention and among which this Convention is in force.
5. This Convention applies mutatis mutandis to the territories referred to in Article 33 which become Parties to this Convention in accordance with the conditions set out in that Article. To that extent the expression "States Parties" also refers to such territories.
Article 3 – Relationship to other international instruments
Nothing in this Convention may be interpreted as:
(a) altering the status or diminishing the level of protection under the 1972 Convention

concerning the Protection of the World Cultural and Natural Heritage of World Heritage properties with which an item of the intangible cultural heritage is directly associated; or (b) affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties.

II. Organs of the Convention

Article 4 – General Assembly of the States Parties

1. as "the General Assembly". The General Assembly is the sovereign body of this Convention.

A General Assembly of the States Parties is hereby established, hereinafter referred to

2. The General Assembly shall meet in ordinary session every two years. It may meet in extraordinary session if it so decides or at the request either of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage or of at least one-third of the States Parties.

3. The General Assembly shall adopt its own Rules of Procedure.

Article 5 – Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage

1. An Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, hereinafter referred to as "the Committee", is hereby established within UNESCO. It shall be composed of representatives of 18 States Parties, elected by the States Parties meeting in General Assembly, once this Convention enters into force in accordance with Article 34.

2. The number of States Members of the Committee shall be increased to 24 once the number of the States Parties to the Convention reaches 50.

Committee

shall be to:

-4-

Article 6 – Election and terms of office of States Members of the Committee

1. The election of States Members of the Committee shall obey the principles of equitable geographical representation and rotation.

2. States Members of the Committee shall be elected for a term of four years by States Parties to the Convention meeting in General Assembly.

3. However, the term of office of half of the States Members of the Committee elected at the first election is limited to two years. These States shall be chosen by lot at the first election.

4. Every two years, the General Assembly shall renew half of the States Members of the Committee.

5. It shall also elect as many States Members of the Committee as required to fill vacancies.

6. A State Member of the Committee may not be elected for two consecutive terms.

7. States Members of the Committee shall choose as their representatives persons who are qualified in the various fields of the intangible cultural heritage.

Article 7 – Functions of the Committee

Without prejudice to other prerogatives granted to it by this Convention, the functions of the

(a) promote the objectives of the Convention, and to encourage and monitor the

implementation thereof;
(b) provide guidance on best practices and make recommendations on measures for the safeguarding of the intangible cultural heritage;
(c) prepare and submit to the General Assembly for approval a draft plan for the use of the resources of the Fund, in accordance with Article 25;
(d) seek means of increasing its resources, and to take the necessary measures to this end, in accordance with Article 25;
(e) prepare and submit to the General Assembly for approval operational directives for the implementation of this Convention;
(f) examine, in accordance with Article 29, the reports submitted by States Parties, and to summarize them for the General Assembly;
(g) examine requests submitted by States Parties, and to decide thereon, in accordance with objective selection criteria to be established by the Committee and approved by the General Assembly for:
1. its activities and decisions.
-5-
(i) inscription on the lists and proposals mentioned under Articles 16, 17 and 18;
(ii) the granting of international assistance in accordance with Article 22.
Article 8 – Working methods of the Committee
The Committee shall be answerable to the General Assembly. It shall report to it on all
2. The Committee shall adopt its own Rules of Procedure by a two-thirds majority of its Members.
3. The Committee may establish, on a temporary basis, whatever ad hoc consultative bodies it deems necessary to carry out its task.
4. The Committee may invite to its meetings any public or private bodies, as well as private persons, with recognized competence in the various fields of the intangible cultural heritage, in order to consult them on specific matters.
Article 9 – Accreditation of advisory organizations
1. The Committee shall propose to the General Assembly the accreditation of non-governmental organizations with recognized competence in the field of the intangible cultural heritage to act in an advisory capacity to the Committee.
2. The Committee shall also propose to the General Assembly the criteria for and modalities of such accreditation.
Article 10 – The Secretariat
1. The Committee shall be assisted by the UNESCO Secretariat.
2. The Secretariat shall prepare the documentation of the General Assembly and of the Committee, as well as the draft agenda of their meetings, and shall ensure the implementation of their decisions.
III. Safeguarding of the intangible cultural heritage at the national level
Article 11 – Role of States Parties
Each State Party shall:
(a) take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory;
(b) among the safeguarding measures referred to in Article 2, paragraph 3, identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non- governmental organizations.

Article 12 – Inventories

1. To ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be regularly updated.

2. When each State Party periodically submits its report to the Committee, in accordance with Article 29, it shall provide relevant information on such inventories.

Article 13 – Other measures for safeguarding

To ensure the safeguarding, development and promotion of the intangible cultural heritage present in its territory, each State Party shall endeavour to:

(a) adopt a general policy aimed at promoting the function of the intangible cultural heritage in society, and at integrating the safeguarding of such heritage into planning programmes;

(b) designate or establish one or more competent bodies for the safeguarding of the intangible cultural heritage present in its territory;

(c) foster scientific, technical and artistic studies, as well as research methodologies, with a view to effective safeguarding of the intangible cultural heritage, in particular the intangible cultural heritage in danger;

(d) adopt appropriate legal, technical, administrative and financial measures aimed at:

(i) fostering the creation or strengthening of institutions for training in the management of the intangible cultural heritage and the transmission of such heritage through forums and spaces intended for the performance or expression thereof;

(ii) ensuring access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage;

(iii) establishing documentation institutions for the intangible cultural heritage and facilitating access to them.

Article 14 – Education, awareness-raising and capacity-building

Each State Party shall endeavour, by all appropriate means, to:

(a) ensure recognition of, respect for, and enhancement of the intangible cultural heritage in society, in particular through:

(i) educational, awareness-raising and information programmes, aimed at the general public, in particular young people;

(ii) specific educational and training programmes within the communities and groups concerned;

(iii) capacity-building activities for the safeguarding of the intangible cultural heritage, in particular management and scientific research; and

(iv) non-formal means of transmitting knowledge;

(b) keep the public informed of the dangers threatening such heritage, and of the activities carried out in pursuance of this Convention;

(c) promote education for the protection of natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage.

Article 15 – Participation of communities, groups and individuals

Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and

transmit such heritage, and to involve them actively in its management.

IV. Safeguarding of the intangible cultural heritage at the international level

Article 16 – Representative List of the Intangible Cultural Heritage of Humanity

1. In order to ensure better visibility of the intangible cultural heritage and awareness of its significance, and to encourage dialogue which respects cultural diversity, the Committee, upon the proposal of the States Parties concerned, shall establish, keep up to date and publish a Representative List of the Intangible Cultural Heritage of Humanity.
2. The Committee shall draw up and submit to the General Assembly for approval the criteria for the establishment, updating and publication of this Representative List.

Article 17 – List of Intangible Cultural Heritage in Need of Urgent Safeguarding

1. With a view to taking appropriate safeguarding measures, the Committee shall establish, keep up to date and publish a List of Intangible Cultural Heritage in Need of Urgent Safeguarding, and shall inscribe such heritage on the List at the request of the State Party concerned.
2. The Committee shall draw up and submit to the General Assembly for approval the criteria for the establishment, updating and publication of this List.
3. In cases of extreme urgency – the objective criteria of which shall be approved by the General Assembly upon the proposal of the Committee – the Committee may inscribe an item of the heritage concerned on the List mentioned in paragraph 1, in consultation with the State Party concerned.

Article 18 – Programmes, projects and activities for the safeguarding of the intangible cultural heritage

1. On the basis of proposals submitted by States Parties, and in accordance with criteria to be defined by the Committee and approved by the General Assembly, the Committee shall periodically select and promote national, subregional and regional programmes, projects and

-8-

activities for the safeguarding of the heritage which it considers best reflect the principles and objectives of this Convention, taking into account the special needs of developing countries.
2. To this end, it shall receive, examine and approve requests for international assistance from States Parties for the preparation of such proposals.
3. The Committee shall accompany the implementation of such projects, programmes and activities by disseminating best practices using means to be determined by it.

V. International cooperation and assistance

Article 19 – Cooperation

1. For the purposes of this Convention, international cooperation includes, inter alia, the exchange of information and experience, joint initiatives, and the establishment of a mechanism of assistance to States Parties in their efforts to safeguard the intangible cultural heritage.
2. Without prejudice to the provisions of their national legislation and customary law and practices, the States Parties recognize that the safeguarding of intangible cultural heritage is of general interest to humanity, and to that end undertake to cooperate at the bilateral, subregional, regional and international levels.

Article 20 – Purposes of international assistance

International assistance may be granted for the following purposes:

(a) the safeguarding of the heritage inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding;
(b) the preparation of inventories in the sense of Articles 11 and 12;
(c) support for programmes, projects and activities carried out at the national, subregional and regional levels aimed at the safeguarding of the intangible cultural heritage;
(d) any other purpose the Committee may deem necessary.

Article 21 – Forms of international assistance

The assistance granted by the Committee to a State Party shall be governed by the operational directives foreseen in Article 7 and by the agreement referred to in Article 24, and may take the following forms:
(a) (b) (c) (d)
studies concerning various aspects of safeguarding; the provision of experts and practitioners; the training of all necessary staff; the elaboration of standard-setting and other measures;
(e) (f) (g)
-9- the creation and operation of infrastructures;
the supply of equipment and know-how;
other forms of financial and technical assistance, including, where appropriate, the granting of low-interest loans and donations.

Article 22 – Conditions governing international assistance

1. The Committee shall establish the procedure for examining requests for international assistance, and shall specify what information shall be included in the requests, such as the measures envisaged and the interventions required, together with an assessment of their cost.
2. In emergencies, requests for assistance shall be examined by the Committee as a matter of priority.
3. In order to reach a decision, the Committee shall undertake such studies and consultations as it deems necessary.

Article 23 – Requests for international assistance

1. Each State Party may submit to the Committee a request for international assistance for the safeguarding of the intangible cultural heritage present in its territory.
2. Such a request may also be jointly submitted by two or more States Parties.
3. The request shall include the information stipulated in Article 22, paragraph 1, together with the necessary documentation.

Article 24 – Role of beneficiary States Parties

1. In conformity with the provisions of this Convention, the international assistance granted shall be regulated by means of an agreement between the beneficiary State Party and the Committee.
2. As a general rule, the beneficiary State Party shall, within the limits of its resources, share the cost of the safeguarding measures for which international assistance is provided.
3. The beneficiary State Party shall submit to the Committee a report on the use made of the assistance provided for the safeguarding of the intangible cultural heritage.

VI. Intangible Cultural Heritage Fund

Article 25 – Nature and resources of the Fund

1. A “Fund for the Safeguarding of the Intangible Cultural Heritage”, hereinafter

referred to as “the Fund”, is hereby established.
2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.
- 10 - 3. The resources of the Fund shall consist of:
(a) contributions made by States Parties; (b) funds appropriated for this purpose by the General Conference of UNESCO; (c) contributions, gifts or bequests which may be made by:
(i) other States;
(ii) organizations and programmes of the United Nations system, particularly the United Nations Development Programme, as well as other international organizations;
(iii) public or private bodies or individuals;
(d) any interest due on the resources of the Fund;
(e) funds raised through collections, and receipts from events organized for the benefit of the Fund;
(f) any other resources authorized by the Fund’s regulations, to be drawn up by the Committee.
4. The use of resources by the Committee shall be decided on the basis of guidelines laid down by the General Assembly.
5. The Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by the Committee.
6. No political, economic or other conditions which are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.
Article 26 – Contributions of States Parties to the Fund
1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay into the Fund, at least every two years, a contribution, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly. This decision of the General Assembly shall be taken by a majority of the States Parties present and voting which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the contribution of the State Party exceed 1% of its contribution to the regular budget of UNESCO.
2. However, each State referred to in Article 32 or in Article 33 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance, approval or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.
3. A State Party to this Convention which has made the declaration referred to in paragraph 2 of this Article shall endeavour to withdraw the said declaration by notifying the Director-General of UNESCO. However, the withdrawal of the declaration shall not take
- 11 -
effect in regard to the contribution due by the State until the date on which the subsequent session of the General Assembly opens.
4. In order to enable the Committee to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article shall be paid on a regular basis, at least every two years, and

should be as close as possible to the contributions they would have owed if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to this Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the Committee; this provision shall not apply to the first election. The term of office of any such State which is already a Member of the Committee shall come to an end at the time of the elections provided for in Article 6 of this Convention.

Article 27 – Voluntary supplementary contributions to the Fund

States Parties wishing to provide voluntary contributions in addition to those foreseen under Article 26 shall inform the Committee, as soon as possible, so as to enable it to plan its operations accordingly.

Article 28 – International fund-raising campaigns

The States Parties shall, insofar as is possible, lend their support to international fund-raising campaigns organized for the benefit of the Fund under the auspices of UNESCO.

VII. Reports

Article 29 – Reports by the States Parties

The States Parties shall submit to the Committee, observing the forms and periodicity to be defined by the Committee, reports on the legislative, regulatory and other measures taken for the implementation of this Convention.

Article 30 – Reports by the Committee

1. On the basis of its activities and the reports by States Parties referred to in Article 29, the Committee shall submit a report to the General Assembly at each of its sessions.
2. The report shall be brought to the attention of the General Conference of UNESCO.

VIII. Transitional clause

Article 31 – Relationship to the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity

1. The Committee shall incorporate in the Representative List of the Intangible Cultural Heritage of Humanity the items proclaimed "Masterpieces of the Oral and Intangible Heritage of Humanity" before the entry into force of this Convention.

2. The incorporation of these items in the Representative List of the Intangible Cultural Heritage of Humanity shall in no way prejudge the criteria for future inscriptions decided upon in accordance with Article 16, paragraph 2.
3. No further Proclamation will be made after the entry into force of this Convention.

IX. Final clauses

Article 32 – Ratification, acceptance or approval

1. This Convention shall be subject to ratification, acceptance or approval by States Members of UNESCO in accordance with their respective constitutional procedures.
2. The instruments of ratification, acceptance or approval shall be deposited with the Director-General of UNESCO.

Article 33 – Accession

1. This Convention shall be open to accession by all States not Members of UNESCO that are invited by the General Conference of UNESCO to accede to it.
2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but have not attained

full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.

3. The instrument of accession shall be deposited with the Director-General of UNESCO.

Article 34 – Entry into force

This Convention shall enter into force three months after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other State Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

Article 35 – Federal or non-unitary constitutional systems

The following provisions shall apply to States Parties which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the jurisdiction of individual constituent States, countries, provinces or cantons which are not obliged by the constitutional system of the federation to

1.

take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 36 – Denunciation

Each State Party may denounce this Convention.

The denunciation shall be notified by an instrument in writing, deposited with the

2. Director-General of UNESCO.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the denouncing State Party until the date on which the withdrawal takes effect.

Article 37 – Depositary functions

The Director-General of UNESCO, as the Depositary of this Convention, shall inform the States Members of the Organization, the States not Members of the Organization referred to in Article 33, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 32 and 33, and of the denunciations provided for in Article 36.

Article 38 – Amendments

1. A State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the

General Assembly for discussion and possible adoption.
2. Amendments shall be adopted by a two-thirds majority of States Parties present and voting.
3. Once adopted, amendments to this Convention shall be submitted for ratification, acceptance, approval or accession to the States Parties.
4. Amendments shall enter into force, but solely with respect to the States Parties that have ratified, accepted, approved or acceded to them, three months after the deposit of the instruments referred to in paragraph 3 of this Article by two-thirds of the States Parties. Thereafter, for each State Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that State Party of its instrument of ratification, acceptance, approval or accession.
5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 5 concerning the number of States Members of the Committee. These amendments shall enter into force at the time they are adopted.
- 14 -
6. A State which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered:
(a) as a Party to this Convention as so amended; and
(b) as a Party to the unamended Convention in relation to any State Party not bound by the amendments.
Article 39 – Authoritative texts
This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authoritative.
Article 40 – Registration
In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.

CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS
Paris, 20 October 2005
CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS
The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 3 to 21 October 2005 at its 33rd session,
Affirming that cultural diversity is a defining characteristic of humanity, *Conscious* that cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all,
Being aware that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations,
Recalling that cultural diversity, flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the local, national and international levels,
Celebrating the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,
Emphasizing the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking into account also the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication,
Taking into account that culture takes diverse forms across time and space and that this diversity is embodied in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity,
Recognizing the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion,
Recognizing the need to take measures to protect the diversity of cultural expressions, including their contents, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment,
Emphasizing the importance of culture for social cohesion in general, and in particular its potential for the enhancement of the status and role of women in society,
Being aware that cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures,
Reaffirming that freedom of thought, expression and information, as well as diversity of the media, enable cultural expressions to flourish within societies,

Recognizing that the diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows individuals and peoples to express and to share with others their ideas and values,
Recalling that linguistic diversity is a fundamental element of cultural diversity, and *reaffirming* the fundamental role that education plays in the protection and promotion of cultural expressions,
Taking into account the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit them for their own development,
Emphasizing the vital role of cultural interaction and creativity, which nurture and renew cultural expressions and enhance the role played by those involved in the development of culture for the progress of society at large,
Recognizing the importance of intellectual property rights in sustaining those involved in cultural creativity,
Being convinced that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value,
Noting that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, they also represent a challenge for cultural diversity, namely in view of risks of imbalances between rich and poor countries,
Being aware of UNESCO's specific mandate to ensure respect for the diversity of cultures and to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image,
Referring to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity of 2001,
Adopts this Convention on 20 October 2005.

I. Objectives and guiding principles

Article 1 – Objectives

The objectives of this Convention are:

(a) to protect and promote the diversity of cultural expressions;

(b) to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;

–3 –

(c) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;

(d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;

(e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;

(f) to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;

(g) to give recognition to the distinctive nature of cultural activities, goods and services

as vehicles of identity, values and meaning;
(h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;
(i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.
Article 2 – Guiding principles
1. **Principle of respect for human rights and fundamental freedoms**
Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.
2. **Principle of sovereignty**
States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.
3. **Principle of equal dignity of and respect for all cultures**
The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.
–4 –
4. **Principle of international solidarity and cooperation**
International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural expression, including their cultural industries, whether nascent or established, at the local, national and international levels.
5. **Principle of the complementarity of economic and cultural aspects of development**
Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.
6. **Principle of sustainable development**
Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.
7. **Principle of equitable access**
Equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.
8. **Principle of openness and balance**
When States adopt measures to support the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures of the world and to

ensure that these measures are geared to the objectives pursued under the present Convention.

II. Scope of application

Article 3 – Scope of application

This Convention shall apply to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions.

III. Definitions

Article 4 – Definitions

For the purposes of this Convention, it is understood that:

1. **Cultural diversity**

"Cultural diversity" refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies.

–5 –

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

2. **Cultural content** "Cultural content" refers to the symbolic meaning, artistic dimension and cultural values

that originate from or express cultural identities. 3. **Cultural expressions**

"Cultural expressions" are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.

4. **Cultural activities, goods and services**

"Cultural activities, goods and services" refers to those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services.

5. **Cultural industries** "Cultural industries" refers to industries producing and distributing cultural goods or

services as defined in paragraph 4 above.

6. **Cultural policies and measures**

"Cultural policies and measures" refers to those policies and measures relating to culture, whether at the local, national, regional or international level that are either focused on culture as such or are designed to have a direct effect on cultural expressions of individuals, groups or societies, including on the creation, production, dissemination, distribution of and access to cultural activities, goods and services.

7. **Protection** "Protection" means the adoption of measures aimed at the preservation, safeguarding and

enhancement of the diversity of cultural expressions. "Protect" means to adopt such measures. 8. **Interculturality**

"Interculturality" refers to the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect.

–6 –

IV. Rights and obligations of Parties

Article 5 – General rule regarding rights and obligations

1. The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention.

2. When a Party implements policies and takes measures to protect and promote the diversity of cultural expressions within its territory, its policies and measures shall be consistent with the provisions of this Convention.

Article 6 – Rights of parties at the national level

1. Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.

2. Such measures may include the following:

(a) regulatory measures aimed at protecting and promoting diversity of cultural expressions;

(b) measures that, in an appropriate manner, provide opportunities for domestic cultural activities, goods and services among all those available within the national territory for the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used for such activities, goods and services;

(c) measures aimed at providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services;

(d) measures aimed at providing public financial assistance;

(e) measures aimed at encouraging non-profit organizations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities;

(f) measures aimed at establishing and supporting public institutions, as appropriate;

(g) measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions;

(h) measures aimed at enhancing diversity of the media, including through public service broadcasting.

–7 –

Article 7 – Measures to promote cultural expressions

1. Parties shall endeavour to create in their territory an environment which encourages individuals and social groups:

(a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples;

(b) to have access to diverse cultural expressions from within their territory as well as

from other countries of the world.
2. involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions.
Parties shall also endeavour to recognize the important contribution of artists, others
Article 8 – Measures to protect cultural expressions
1. Without prejudice to the provisions of Articles 5 and 6, a Party may determine the existence of special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding.
2. Parties may take all appropriate measures to protect and preserve cultural expressions in situations referred to in paragraph 1 in a manner consistent with the provisions of this Convention.
3. Parties shall report to the Intergovernmental Committee referred to in Article 23 all measures taken to meet the exigencies of the situation, and the Committee may make appropriate recommendations.
Article 9 – Information sharing and transparency
Parties shall:
(a) provide appropriate information in their reports to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level;
(b) designate a point of contact responsible for information sharing in relation to this Convention;
(c) share and exchange information relating to the protection and promotion of the diversity of cultural expressions.
Article 10 – Education and public awareness
Parties shall:
(a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, *inter alia*, through educational and greater public awareness programmes;
–8 –
(b) cooperate with other Parties and international and regional organizations in achieving the purpose of this article;
(c) endeavour to encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries. These measures should be implemented in a manner which does not have a negative impact on traditional forms of production.
Article 11 – Participation of civil society
Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.
Article 12 – Promotion of international cooperation
Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions, taking particular account of the situations referred to in Articles 8 and 17, notably in order to:
(a) facilitate dialogue among Parties on cultural policy;
(b) enhance public sector strategic and management capacities in cultural public sector

institutions, through professional and international cultural exchanges and sharing of best practices;
(c) reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions;
(d) promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions;
(e) encourage the conclusion of co-production and co-distribution agreements.
Article 13 – Integration of culture in sustainable development
Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.
Article 14 – Cooperation for development
Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector by, *inter alia*, the following means:
–9 –
(a) the strengthening of the cultural industries in developing countries through:
(i) creating and strengthening cultural production and distribution capacities in developing countries;
(ii) facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services;
(iii) enabling the emergence of viable local and regional markets;
(iv) adopting, where possible, appropriate measures in developed countries with a view to facilitating access to their territory for the cultural activities, goods and services of developing countries;
(v) providing support for creative work and facilitating the mobility, to the extent possible, of artists from the developing world;
(vi) encouraging appropriate collaboration between developed and developing countries in the areas, *inter alia*, of music and film;
(b) capacity-building through the exchange of information, experience and expertise, as well as the training of human resources in developing countries, in the public and private sector relating to, *inter alia*, strategic and management capacities, policy development and implementation, promotion and distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer;
(c) technology transfer through the introduction of appropriate incentive measures for the transfer of technology and know-how, especially in the areas of cultural industries and enterprises;
(d) financial support through:
(i) the establishment of an International Fund for Cultural Diversity as provided in Article 18;
(ii) the provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity;
(iii) other forms of financial assistance such as low interest loans, grants and other funding mechanisms.

Article 15 – Collaborative arrangements

Parties shall encourage the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions. These innovative partnerships shall, according to the practical needs of developing countries, emphasize the further development of infrastructure, human resources and policies, as well as the exchange of cultural activities, goods and services.

– 10 –

Article 16 – Preferential treatment for developing countries

Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.

Article 17 – International cooperation in situations of serious threat to cultural expressions

Parties shall cooperate in providing assistance to each other, and, in particular to developing countries, in situations referred to under Article 8.

Article 18 – International Fund for Cultural Diversity

1. An International Fund for Cultural Diversity, hereinafter referred to as "the Fund", is hereby established.
2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.
3. The resources of the Fund shall consist of: (a) voluntary contributions made by Parties; (b) funds appropriated for this purpose by the General Conference of UNESCO;

(c) contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;

(d) any interest due on resources of the Fund;

(e) funds raised through collections and receipts from events organized for the benefit of the Fund;

(f) any other resources authorized by the Fund's regulations.

4. The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties referred to in Article 22.
5. The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by it.
6. No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.
7. Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention.

2. of the Parties under any other treaties to which they are parties.

– 11 –

Article 19 – Exchange, analysis and dissemination of information

1. Parties agree to exchange information and share expertise concerning data

collection and statistics on the diversity of cultural expressions as well as on best practices for its protection and promotion.
2. UNESCO shall facilitate, through the use of existing mechanisms within the Secretariat, the collection, analysis and dissemination of all relevant information, statistics and best practices.
3. UNESCO shall also establish and update a data bank on different sectors and governmental, private and non-profit organizations involved in the area of cultural expressions.
4. To facilitate the collection of data, UNESCO shall pay particular attention to capacity-building and the strengthening of expertise for Parties that submit a request for such assistance.
5. The collection of information identified in this Article shall complement the information collected under the provisions of Article 9.

V. Relationship to other instruments

Article 20 – Relationship to other treaties: mutual supportiveness, complementarity and non-subordination

1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty,
(a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and
(b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.
Nothing in this Convention shall be interpreted as modifying rights and obligations

Article 21 – International consultation and coordination

Parties undertake to promote the objectives and principles of this Convention in other international forums. For this purpose, Parties shall consult each other, as appropriate, bearing in mind these objectives and principles.
– 12 –

VI. Organs of the Convention

Article 22 – Conference of Parties

1. A Conference of Parties shall be established. The Conference of Parties shall be the plenary and supreme body of this Convention.
2. The Conference of Parties shall meet in ordinary session every two years, as far as possible, in conjunction with the General Conference of UNESCO. It may meet in extraordinary session if it so decides or if the Intergovernmental Committee receives a request to that effect from at least one-third of the Parties.
3. The Conference of Parties shall adopt its own rules of procedure. 4. The functions of the Conference of Parties shall be, *inter alia*:
(a) to elect the Members of the Intergovernmental Committee;
(b) to receive and examine reports of the Parties to this Convention transmitted by the Intergovernmental Committee;
(c) to approve the operational guidelines prepared upon its request by the Intergovernmental Committee;
(d) to take whatever other measures it may consider necessary to further the objectives

of this Convention.

Article 23 – Intergovernmental Committee

1. An of Cultural Expressions, hereinafter referred to as "the Intergovernmental Committee", shall be established within UNESCO. It shall be composed of representatives of 18 States Parties to the Convention, elected for a term of four years by the Conference of Parties upon entry into force of this Convention pursuant to Article 29.
2. The Intergovernmental Committee shall meet annually.
3. The Intergovernmental Committee shall function under the authority and guidance of and be accountable to the Conference of Parties.
4. The Members of the Intergovernmental Committee shall be increased to 24 once the number of Parties to the Convention reaches 50.
5. The election of Members of the Intergovernmental Committee shall be based on the principles of equitable geographical representation as well as rotation.
6. Without prejudice to the other responsibilities conferred upon it by this Convention, the functions of the Intergovernmental Committee shall be:

(a) to promote the objectives of this Convention and to encourage and monitor the implementation thereof;

Intergovernmental Committee for the Protection and Promotion of the Diversity

– 13 –

(b) to prepare and submit for approval by the Conference of Parties, upon its request, the operational guidelines for the implementation and application of the provisions of the Convention;

(c) to transmit to the Conference of Parties reports from Parties to the Convention, together with its comments and a summary of their contents;

(d) to make appropriate recommendations to be taken in situations brought to its attention by Parties to the Convention in accordance with relevant provisions of the Convention, in particular Article 8;

(e) to establish procedures and other mechanisms for consultation aimed at promoting the objectives and principles of this Convention in other international forums;

(f) to perform any other tasks as may be requested by the Conference of Parties.

7. The Intergovernmental Committee, in accordance with its Rules of Procedure, may invite at any time public or private organizations or individuals to participate in its meetings for consultation on specific issues.
8. The Intergovernmental Committee shall prepare and submit to the Conference of Parties, for approval, its own Rules of Procedure.

Article 24 – UNESCO Secretariat

1. The organs of the Convention shall be assisted by the UNESCO Secretariat.
2. The Secretariat shall prepare the documentation of the Conference of Parties and the Intergovernmental Committee as well as the agenda of their meetings and shall assist in and report on the implementation of their decisions.

VII. Final clauses

Article 25 – Settlement of disputes

1. In the event of a dispute between Parties to this Convention concerning the interpretation or the application of the Convention, the Parties shall seek a solution by negotiation.
2. If the Parties concerned cannot reach agreement by negotiation, they may jointly

seek the good offices of, or request mediation by, a third party.
3. If good offices or mediation are not undertaken or if there is no settlement by negotiation, good offices or mediation, a Party may have recourse to conciliation in accordance with the procedure laid down in the Annex of this Convention. The Parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.
– 14 –
4. Each Party may, at the time of ratification, acceptance, approval or accession, declare that it does not recognize the conciliation procedure provided for above. Any Party having made such a declaration may, at any time, withdraw this declaration by notification to the Director-General of UNESCO.
Article 26 – Ratification, acceptance, approval or accession by Member States
1. This Convention shall be subject to ratification, acceptance, approval or accession by Member States of UNESCO in accordance with their respective constitutional procedures.
2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director-General of UNESCO.
Article 27 – Accession
1. This Convention shall be open to accession by all States not Members of UNESCO but members of the United Nations, or of any of its specialized agencies, that are invited by the General Conference of UNESCO to accede to it.
2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but which have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.
3. The following provisions apply to regional economic integration organizations:
(a) This Convention shall also be open to accession by any regional economic integration organization, which shall, except as provided below, be fully bound by the provisions of the Convention in the same manner as States Parties;
(b) In the event that one or more Member States of such an organization is also Party to this Convention, the organization and such Member State or States shall decide on their responsibility for the performance of their obligations under this Convention. Such distribution of responsibility shall take effect following completion of the notification procedure described in subparagraph (c). The organization and the Member States shall not be entitled to exercise rights under this Convention concurrently. In addition, regional economic integration organizations, in matters within their competence, shall exercise their rights to vote with a number of votes equal to the number of their Member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice-versa;
(c) A regional economic integration organization and its Member State or States which have agreed on a distribution of responsibilities as provided in subparagraph (b) shall inform the Parties of any such proposed distribution of responsibilities in the following manner:
4. UNESCO.
– 15 –

(i) in their instrument of accession, such organization shall declare with specificity, the distribution of their responsibilities with respect to matters governed by the Convention;
(ii) in the event of any later modification of their respective responsibilities, the regional economic integration organization shall inform the depositary of any such proposed modification of their respective responsibilities; the depositary shall in turn inform the Parties of such modification;
(d) Member States of a regional economic integration organization which become Parties to this Convention shall be presumed to retain competence over all matters in respect of which transfers of competence to the organization have not been specifically declared or informed to the depositary;
(e) "Regional economic integration organization" means an organization constituted by sovereign States, members of the United Nations or of any of its specialized agencies, to which those States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to become a Party to it.
The instrument of accession shall be deposited with the Director-General of
Article 28 – Point of contact
Upon becoming Parties to this Convention, each Party shall designate a point of contact as referred to in Article 9.
Article 29 – Entry into force
1. This Convention shall enter into force three months after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States or regional economic integration organizations that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.
2. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by Member States of the organization.
Article 30 – Federal or non-unitary constitutional systems
Recognizing that international agreements are equally binding on Parties regardless of their constitutional systems, the following provisions shall apply to Parties which have a federal or non-unitary constitutional system:
(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power,
– 16 –
the obligations of the federal or central government shall be the same as for those Parties which are not federal States;
(b) with regard to the provisions of the Convention, the implementation of which comes under the jurisdiction of individual constituent units such as States, counties, provinces, or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform, as necessary, the competent authorities of constituent units such as States, counties, provinces or cantons of the said provisions, with its recommendation for their adoption.
Article 31 – Denunciation
1. Any Party to this Convention may denounce this Convention.

2. The denunciation shall be notified by an instrument in writing deposited with the Director-General of UNESCO.
3. The denunciation shall take effect 12 months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the Party denouncing the Convention until the date on which the withdrawal takes effect.

Article 32 – Depositary functions

The Director-General of UNESCO, as the depositary of this Convention, shall inform the Member States of the Organization, the States not members of the Organization and regional economic integration organizations referred to in Article 27, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 26 and 27, and of the denunciations provided for in Article 31.

Article 33 – Amendments

1. A Party to this Convention may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all Parties. If, within six months from the date of dispatch of the communication, no less than one half of the Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the Conference of Parties for discussion and possible adoption.
2. Amendments shall be adopted by a two-thirds majority of Parties present and voting.
3. Once adopted, amendments to this Convention shall be submitted to the Parties for ratification, acceptance, approval or accession.
4. For Parties which have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the deposit of the instruments referred to in paragraph 3 of this Article by two-thirds of the Parties. Thereafter, for each Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that Party of its instrument of ratification, acceptance, approval or accession.

5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 23 concerning the number of Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.
6. A State or a regional economic integration organization referred to in Article 27 which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered to be:

(a) Party to this Convention as so amended; and
(b) a Party to the unamended Convention in relation to any Party not bound by the amendments.

Article 34 – Authoritative texts

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, all six texts being equally authoritative.

Article 35 – Registration

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the

Director- General of UNESCO.
– 18 –
ANNEX
Conciliation Procedure
Article 1 – Conciliation Commission
A Conciliation Commission shall be created upon the request of one of the Parties to the dispute. The Commission shall, unless the Parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.
Article 2 – Members of the Commission
In disputes between more than two Parties, Parties in the same interest shall appoint their members of the Commission jointly by agreement. Where two or more Parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.
Article 3 – Appointments
If any appointments by the Parties are not made within two months of the date of the request to create a Conciliation Commission, the Director-General of UNESCO shall, if asked to do so by the Party that made the request, make those appointments within a further two-month period.
Article 4 – President of the Commission
If a President of the Conciliation Commission has not been chosen within two months of the last of the members of the Commission being appointed, the Director-General of UNESCO shall, if asked to do so by a Party, designate a President within a further two-month period.
Article 5 – Decisions
The Conciliation Commission shall take its decisions by majority vote of its members. It shall, unless the Parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the Parties shall consider in good faith.
Article 6 – Disagreement
A disagreement as to whether the Conciliation Commission has competence shall be decided by the Commission.

Berne Convention for the Protection of Literary and Artistic Works

Paris Act
of July 24, 1971,
as amended on
September 28, 1979

Berne Convention for the Protection of Literary and Artistic Works

of September 9, 1886,
completed at PARIS on May 4, 1896,
revised at BERLIN on November 13, 1908,
completed at BERNE on March 20, 1914,
revised at ROME on June 2, 1928,
at BRUSSELS on June 26, 1948,
at STOCKHOLM on July 14, 1967,
and at PARIS on July 24, 1971,
and amended on September 28, 1979

TABLE OF CONTENTS*

* This Table of Contents is added for the convenience of the reader. It does not appear in the original (English) text of the Convention.

Appendix

SPECIAL PROVISIONS REGARDING DEVELOPING COUNTRIES

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Recognizing the importance of the work of the Revision Conference held at Stockholm in 1967,

Have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1

[*Establishment of a Union*][1]

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2

[*Protected Works:* 1. "Literary and artistic works"; 2. Possible requirement of fixation; 3. Derivative works; 4. Official texts; 5. Collections; 6. Obligation to protect; beneficiaries of protection; 7. Works of applied art and industrial designs; 8. News]

(1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

[1] Each Article and the Appendix have been given titles to facilitate their identification. There are no titles in the signed (English) text.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 2[bis]

[*Possible Limitation of Protection of Certain Works:* 1. Certain speeches; 2. Certain uses of lectures and addresses; 3. Right to make collections of such works]

(1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11[bis](1) of this Convention, when such use is justified by the informatory purpose.

(3) Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

Article 3

[*Criteria of Eligibility for Protection:* 1. Nationality of author; place of publication of work; 2. Residence of author; 3. "Published" works; 4. "Simultaneously published" works]

(1) The protection of this Convention shall apply to:

(a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;

(b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

[*Criteria of Eligibility for Protection of Cinematographic Works, Works of Architecture and Certain Artistic Works*]

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

(a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;

(b) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

[*Rights Guaranteed:* 1. and 2. Outside the country of origin; 3. In the country of origin; 4. "Country of origin"]

(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be:

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;

(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:

(i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and

(ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6

[*Possible Restriction of Protection in Respect of Certain Works of Nationals of Certain Countries Outside the Union:* 1. In the country of the first publication and in other countries; 2. No retroactivity; 3. Notice]

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General") by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Article 6[bis]

[*Moral Rights:* 1. To claim authorship; to object to certain modifications and other derogatory actions; 2. After the author's death; 3. Means of redress]

(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

[*Term of Protection:* 1. Generally; 2. For cinematographic works; 3. For anonymous and pseudonymous works; 4. For photographic works and works of applied art; 5. Starting date of computation; 6. Longer terms; 7. Shorter terms; 8. Applicable law; "comparison" of terms]

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.

(3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.

(4) It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of the year following the death or such event.

(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.

(7) Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act.

(8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 7bis

[*Term of Protection for Works of Joint Authorship*]

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8

[*Right of Translation*]

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9

[*Right of Reproduction:* 1. Generally; 2. Possible exceptions; 3. Sound and visual recordings]

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 10

[*Certain Free Uses of Works:* 1. Quotations; 2. Illustrations for teaching; 3. Indication of source and author]

(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

Article 10bis

[*Further Possible Free Uses of Works:* 1. Of certain articles and broadcast works; 2. Of works seen or heard in connection with current events]

(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Article 11

[*Certain Rights in Dramatic and Musical Works:* 1. Right of public performance and of communication to the public of a performance; 2. In respect of translations]

(1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

(i) the public performance of their works, including such public performance by any means or process;

(ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 11bis

[*Broadcasting and Related Rights:* 1. Broadcasting and other wireless communications, public communication of broadcast by wire or rebroadcast, public communication of broadcast by loudspeaker or analogous instruments; 2. Compulsory licenses; 3. Recording; ephemeral recordings]

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;

(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;

(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11ter

[*Certain Rights in Literary Works:* 1. Right of public recitation and of communication to the public of a recitation; 2. In respect of translations]

(1) Authors of literary works shall enjoy the exclusive right of authorizing:

(i) the public recitation of their works, including such public recitation by any means or process;

(ii) any communication to the public of the recitation of their works.

(2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 12

[*Right of Adaptation, Arrangement and Other Alteration*]

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13

[*Possible Limitation of the Right of Recording of Musical Works and Any Words Pertaining Thereto:* 1. Compulsory licenses; 2. Transitory measures; 3. Seizure on importation of copies made without the author's permission]

(1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Conventions signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act.

(3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14

[*Cinematographic and Related Rights:* 1. Cinematographic adaptation and reproduction; distribution; public performance and public communication by wire of works thus adapted or reproduced; 2. Adaptation of cinematographic productions; 3. No compulsory licenses]

(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.

(3) The provisions of Article 13(1) shall not apply.

Article 14bis

[*Special Provisions Concerning Cinematographic Works:* 1. Assimilation to "original" works; 2. Ownership; limitation of certain rights of certain contributors; 3. Certain other contributors]

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2)

(a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph *(b)*, be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

(d) By "contrary or special stipulation" is meant any restrictive condition which is relevant to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)*(b)* above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)*(b)* to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Article 14ter

[*"Droit de suite" in Works of Art and Manuscripts:*
1. Right to an interest in resales; 2. Applicable law; 3. Procedure]

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

[*Right to Enforce Protected Rights:* 1. Where author's name is indicated or where pseudonym leaves no doubt as to author's identity; 2. In the case of cinematographic works; 3. In the case of anonymous and pseudonymous works; 4. In the case of certain unpublished works of unknown authorship]

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

(3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.

(4)

(a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

(b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

Article 16

[*Infringing Copies:* 1. Seizure; 2. Seizure on importation; 3. Applicable law]

(1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.

(2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

Article 17

[*Possibility of Control of Circulation, Presentation and Exhibition of Works*]

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18

[*Works Existing on Convention's Entry Into Force:* 1. Protectable where protection not yet expired in country of origin; 2. Non-protectable where protection already expired in country where it is claimed; 3. Application of these principles; 4. Special cases]

(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

(4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19

[*Protection Greater than Resulting from Convention*]

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20

[*Special Agreements Among Countries of the Union*]

The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21

[*Special Provisions Regarding Developing Countries:* 1. Reference to Appendix; 2. Appendix part of Act]

(1) Special provisions regarding developing countries are included in the Appendix.

(2) Subject to the provisions of Article 28(1)*(b)*, the Appendix forms an integral part of this Act.

Article 22

[*Assembly:* 1. Constitution and composition; 2. Tasks; 3. Quorum, voting, observers; 4. Convocation; 5. Rules of procedure]

(1)

(a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26.

(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2)

(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as “the International Bureau”) referred to in the Convention Establishing the World Intellectual Property Organization (hereinafter designated as “the Organization”), due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26;

(iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(iv) elect the members of the Executive Committee of the Assembly;

(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;

(vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;

(vii) adopt the financial regulations of the Union;

(viii) establish such committees of experts and working groups as may be necessary for the work of the Union;

(ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(x) adopt amendments to Articles 22 to 26;

(xi) take any other appropriate action designed to further the objectives of the Union;

(xii) exercise such other functions as are appropriate under this Convention;

(xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3)

(a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph *(b)*, if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one country only.

(g) Countries of the Union not members of the Assembly shall be admitted to its meetings as observers.

(4)

(a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

(5) The Assembly shall adopt its own rules of procedure.

Article 23

[*Executive Committee:* 1. Constitution; 2. Composition; 3. Number of members; 4. Geographical distribution; special agreements; 5. Term, limits of re-eligibility, rules of election; 6. Tasks; 7. Convocation; 8. Quorum, voting; 9. Observers; 10. Rules of procedure]

(1) The Assembly shall have an Executive Committee.

(2)

(a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)*(b)*, have an ex officio seat on the Committee.

(b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements which might be established in relation with the Union to be among the countries constituting the Executive Committee.

(5)

(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected, but not more than two-thirds of them.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6)

(a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly respecting the draft program and biennial budget of the Union prepared by the Director General;

(iii) [*deleted*]

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it under this Convention.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7)

(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

(8)

(a) Each country member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) A delegate may represent, and vote in the name of, one country only.

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 24

[*International Bureau:* 1. Tasks in general, Director General; 2. General information; 3. Periodical; 4. Information to countries; 5. Studies and services; 6. Participation in meetings; 7. Conferences of revision; 8. Other tasks]

(1)

(a) The administrative tasks with respect to the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright.

(5) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

(7)

(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 25

[*Finances:* 1. Budget; 2. Coordination with other Unions; 3. Resources; 4. Contributions; possible extension of previous budget; 5. Fees and charges; 6. Working capital fund; 7. Advances by host Government; 8. Auditing of accounts]

(1)

(a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Union shall be financed from the following sources:

(i) contributions of the countries of the Union;

(ii) fees and charges due for services performed by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4)

(a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6)

(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, an increase shall be decided by the Assembly.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the increase decided.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7)

(a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.

(b) The country referred to in subparagraph *(a)* and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 26

[*Amendments:* 1. Provisions susceptible of amendment by the Assembly; proposals; 2. Adoption; 3. Entry into force]

(1) Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 27

[*Revision:* 1. Objective; 2. Conferences; 3. Adoption]

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require the unanimity of the votes cast.

Article 28

[*Acceptance and Entry Into Force of Act for Countries of the Union:* 1. Ratification, accession; possibility of excluding certain provisions; withdrawal of exclusion; 2. Entry into force of Articles 1 to 21 and Appendix; 3. Entry into force of Articles 22 to 38]

(1)

(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country has previously made a declaration under Article VI(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20.

(c) Any country of the Union which, in accordance with subparagraph *(b)*, has excluded provisions therein referred to from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Such declaration shall be deposited with the Director General.

(2)

(a) Articles 1 to 21 and the Appendix shall enter into force three months after both of the following two conditions are fulfilled:

(i) at least five countries of the Union have ratified or acceded to this Act without making a declaration under paragraph (1)*(b)*,

(ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.

(b) The entry into force referred to in subparagraph *(a)* shall apply to those countries of the Union which, at least three months before the said entry into force, have deposited instruments of ratification or accession not containing a declaration under paragraph (1)*(b)*.

(c) With respect to any country of the Union not covered by subparagraph *(b)* and which ratifies or accedes to this Act without making a declaration under paragraph (1)*(b)*, Articles 1 to 21 and the Appendix shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix shall enter into force with respect to that country on the date thus indicated.

(d) The provisions of subparagraphs *(a)* to *(c)* do not affect the application of Article VI of the Appendix.

(3) With respect to any country of the Union which ratifies or accedes to this Act with or without a declaration made under paragraph (1)*(b)*, Articles 22 to 38 shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.

Article 29

[*Acceptance and Entry Into Force for Countries Outside the Union:* 1. Accession; 2. Entry into force]

(1) Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General.

(2)

(a) Subject to subparagraph *(b)*, this Convention shall enter into force with respect to any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention shall enter into force with respect to that country on the date thus indicated.

(b) If the entry into force according to subparagraph *(a)* precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)*(a)*, the said country shall, in the meantime, be bound, instead of by Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

Article 29bis

[*Effect of Acceptance of Act for the Purposes of Article 14(2) of the WIPO Convention*]

Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention establishing the Organization, amount to ratification of or accession to the said Stockholm Act with the limitation set forth in Article 28(1)*(b)*(i) thereof.

Article 30

[*Reservations:* 1. Limits of possibility of making reservations; 2. Earlier reservations; reservation as to the right of translation; withdrawal of reservation]

(1) Subject to the exceptions permitted by paragraph (2) of this Article, by Article 28(1)*(b)*, by Article 33(2), and by the Appendix, ratification or accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention.

(2)

(a) Any country of the Union ratifying or acceding to this Act may, subject to Article V(2) of the Appendix, retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

(b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)*(b)* of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.

(c) Any country may withdraw such reservations at any time by notification addressed to the Director General.

Article 31

[*Applicability to Certain Territories:* 1. Declaration; 2. Withdrawal of declaration; 3. Effective date; 4. Acceptance of factual situations not implied]

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification at any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)

(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

(4) This Article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of the factual situation concerning a territory to which this Convention is made applicable by another country of the Union by virtue of a declaration under paragraph (1).

Article 32

[*Applicability of this Act and of Earlier Acts:* 1. As between countries already members of the Union; 2. As between a country becoming a member of the Union and other countries members of the Union; 3. Applicability of the Appendix in Certain Relations]

(1) This Act shall, as regards relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.

(2) Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)*(b)*. Such countries recognize that the said country of the Union, in its relations with them:

(i) may apply the provisions of the most recent Act by which it is bound, and

(ii) subject to Article I(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act.

(3) Any country which has availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties of which it has availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.

Article 33

[*Disputes:* 1. Jurisdiction of the International Court of Justice; 2. Reservation as to such jurisdiction; 3. Withdrawal of reservation]

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 34

[*Closing of Certain Earlier Provisions:* 1. Of earlier Acts; 2. Of the Protocol to the Stockholm Act]

(1) Subject to Article 29bis no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.

(2) Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

Article 35

[*Duration of the Convention; Denunciation:* 1. Unlimited duration; 2. Possibility of denunciation; 3. Effective date of denunciation; 4. Moratorium on denunciation]

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 36

[*Application of the Convention:* 1. Obligation to adopt the necessary measures; 2. Time from which obligation exists]

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 37

[*Final Clauses:* 1. Languages of the Act; 2. Signature; 3. Certified copies; 4. Registration; 5. Notifications]

(1)

(a) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Portuguese and Spanish languages, and such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)*(a)* shall be deposited with the Government of the French Republic.

(3) The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)*(c)*, 30(2)*(a)* and *(b)*, and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)*(c)*, 31(1) and (2), 33(3), and 38(1), as well as the Appendix.

Article 38

[*Transitory Provisions:* 1. Exercise of the "five-year privilege"; 2. Bureau of the Union, Director of the Bureau; 3. Succession of Bureau of the Union]

(1) Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said Articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the said date.

(2) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(3) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

APPENDIX

[SPECIAL PROVISIONS REGARDING DEVELOPING COUNTRIES]

Article I

[*Faculties Open to Developing Countries:* 1. Availability of certain faculties; declaration: 2. Duration of effect of declaration, 3. Cessation of developing country status; 4. Existing stocks of copies; 5. Declarations concerning certain territories; 6. Limits of reciprocity]

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)*(c)*, at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)*(a)*.

(2)

(a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.

(b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph *(a)*.

(3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6)

(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)*(b)*, second sentence, shall not, until the date on which the period applicable under Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1)*(a)*.

Article II

[*Limitations on the Right of Translation:* 1. Licenses grantable by competent authority; 2. to 4. Conditions allowing the grant of such licenses; 5. Purposes for which licenses may be granted; 6. Termination of licenses; 7. Works composed mainly of illustrations;
8. Works withdrawn from circulation; 9. Licenses for broadcasting organizations]

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)

(a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(b) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.

(3)

(a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)*(a)*.

(b) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)*(a)* a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

(4)

(a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed

(i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or

(ii) where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

(5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.

(8) No license shall be granted under this Article when the author has withdrawn from circulation all copies of his work.

(9)

(a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:

(i) the translation is made from a copy made and acquired in accordance with the laws of the said country;

(ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;

(iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;

(iv) all uses made of the translation are without any commercial purpose.

(b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph *(a)* and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.

(c) Provided that all of the criteria and conditions set out in subparagraph *(a)* are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(d) Subject to subparagraphs *(a)* to *(c)*, the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

Article III

[*Limitation on the Right of Reproduction:* 1. Licenses grantable by competent authority; 2. to 5. Conditions allowing the grant of such licenses; 6. Termination of licenses; 7. Works to which this Article applies]

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)

(a) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of

(i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or

(ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(b) A license to reproduce and publish an edition which has been distributed as described in subparagraph *(a)* may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in

the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.

(3) The period referred to in paragraph (2)*(a)(i)* shall be five years, except that

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

(ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4)

(a) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed

(i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or

(ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(c) If, during the period of six or three months referred to in subparagraphs *(a)* and *(b)*, a distribution as described in paragraph (2)*(a)* has taken place, no license shall be granted under this Article.

(d) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

(i) where the translation was not published by the owner of the right of translation or with his authorization, or

(ii) where the translation is not in a language in general use in the country in which the license is applied for.

(6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7)

(a) Subject to subparagraph *(b)*, the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV

[*Provisions Common to Licenses Under Articles II and III:* 1 and 2. Procedure; 3. Indication of author and title of work; 4. Exportation of copies; 5. Notice; 6. Compensation]

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the

edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2).

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.

(4)

(a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

(b) For the purposes of subparagraph *(a)*, the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).

(c) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph *(a)*, be considered to constitute export if all of the following conditions are met:

(i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;

(ii) the copies are to be used only for the purpose of teaching, scholarship or research;

(iii) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and

(iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Government of the country in which the license has been granted.

(5) All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6)

(a) Due provision shall be made at the national level to ensure

(i) that the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and

(ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

Article V

[*Alternative Possibility for Limitation of the Right of Translation:* 1. Regime provided for under the 1886 and 1896 Acts; 2. No possibility of change to regime under Article II; 3. Time limit for choosing the alternative possibility]

(1)

(a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:

(i) if it is a country to which Article 30(2)*(a)* applies, make a declaration under that provision as far as the right of translation is concerned;

(ii) if it is a country to which Article 30(2)*(a)* does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)*(b)*, first sentence.

(b) In the case of a country which ceases to be regarded as a developing country as referred to in Article I(1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I(3) expires.

(c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

(3) Any country which has ceased to be regarded as a developing country as referred to in Article I(1) may, not later than two years prior to the expiration of the period applicable under Article I(3), make a declaration to the effect provided for in Article 30(2)*(b)*, first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I(3) expires.

Article VI

[*Possibilities of applying, or admitting the application of, certain provisions of the Appendix before becoming bound by it:* 1. Declaration; 2. Depository and effective date of declaration]

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

(i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;

(ii) that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

Paris Convention for the Protection of Industrial Property

of March 20, 1883,

as revised
at Brussels on December 14, 1900, at Washington
on June 2, 1911, at The Hague on November 6, 1925,
at London on June 2, 1934, at Lisbon on October 31, 1958,
and at Stockholm on July 14, 1967,
and as amended on September 28, 1979

TABLE OF CONTENTS*

* This Table of Contents is added for the convenience of the reader. It does not appear in the signed text of the Convention.

Article 1
[Establishment of the Union; Scope of Industrial Property][1])

(1) The countries to which this Convention applies constitute a Union for the protection of industrial property.

(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.

(4) Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

Article 2
[National Treatment for Nationals of Countries of the Union]

(1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

(2) However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

[1] Articles have been given titles to facilitate their identification. There are no titles in the signed (French) text.

Article 3

[Same Treatment for Certain Categories of Persons as for Nationals of Countries of the Union]

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Article 4

[A to I. *Patents, Utility Models, Industrial Designs, Marks, Inventors' Certificates:* Right of Priority. – G. *Patents:* Division of the Application]

A.—

(1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

B. — Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third–party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union

C.—

(1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

D.—

(1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may

in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E.—

(1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

F. — No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

G.—

(1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

H. — Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

I.—

(1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate.

Article 4bis

[*Patents:* Independence of Patents Obtained for the Same Invention in Different Countries]

(1) Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

(2) The foregoing provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for nullity and forfeiture, and as regards their normal duration.

(3) The provision shall apply to all patents existing at the time when it comes into effect.

(4) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.

(5) Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

Article 4ter

[*Patents:* Mention of the Inventor in the Patent]

The inventor shall have the right to be mentioned as such in the patent.

Article 4^{quater}

[*Patents:* Patentability in Case of Restrictions of Sale by Law]

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

Article 5

[A. *Patents:* Importation of Articles; Failure to Work or Insufficient Working; Compulsory Licenses. — B. *Industrial Designs:* Failure to Work; Importation of Articles. — C. *Marks:* Failure to Use; Different Forms; Use by Co–proprietors. — D. *Patents, Utility Models, Marks, Industrial Designs:* Marking]

A.—

(1) Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.

(2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.

(3) Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.

(4) A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non–exclusive and shall not be transferable, even in the form of the grant of a sub–license, except with that part of the enterprise or goodwill which exploits such license.

(5) The foregoing provisions shall be applicable, mutatis mutandis, to utility models.

B. — The protection of industrial designs shall not, under any circumstance, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

C.—

(1) If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction.

(2) Use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the

Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.

(3) Concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co–proprietors of the mark according to the provisions of the domestic law of the country where protection is claimed shall not prevent registration or diminish in any way the protection granted to the said mark in any country of the Union, provided that such use does not result in misleading the public and is not contrary to the public interest.

D. — No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the goods as a condition of recognition of the right to protection.

Article 5bis

[*All Industrial Property Rights:* Period of Grace for the Payment of Fees for the Maintenance of Rights; *Patents:* Restoration]

(1) A period of grace of not less than six months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge.

(2) The countries of the Union shall have the right to provide for the restoration of patents which have lapsed by reason of non–payment of fees.

Article 5ter

[*Patents:* Patented Devices Forming Part of Vessels, Aircraft, or Land Vehicles]

In any country of the Union the following shall not be considered as infringements of the rights of a patentee:

1. the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of the said country, provided that such devices are used there exclusively for the needs of the vessel;
2. the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the said country.

Article 5quater

[*Patents:* Importation of Products Manufactured by a Process Patented in the Importing Country]

When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent, with respect to products manufactured in that country.

Article 5quinquies

[*Industrial Designs*]

Industrial designs shall be protected in all the countries of the Union.

Article 6

[*Marks:* Conditions of Registration; Independence of Protection of Same Mark in Different Countries]

(1) The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.

(2) However, an application for the registration of a mark filed by a national of a country of the Union in any country of the Union may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin.

(3) A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

Article 6bis

[*Marks:* Well–Known Marks]

(1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well–known mark or an imitation liable to create confusion therewith.

(2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.

(3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

Article 6ter

[*Marks:* Prohibitions concerning State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations]

(1)

(a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph *(a)*, above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.

(c) No country of the Union shall be required to apply the provisions of subparagraph *(b)*, above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration referred to in subparagraph *(a)*, above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.

(2) Prohibition of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.

(3)

(a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated. Nevertheless such communication is not obligatory in respect of flags of States.

(b) The provisions of subparagraph *(b)* of paragraph (1) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the latter have communicated to the countries of the Union through the intermediary of the International Bureau.

(4) Any country of the Union may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country or international intergovernmental organization concerned.

(5) In the case of State flags, the measures prescribed by paragraph (1), above, shall apply solely to marks registered after November 6, 1925.

(6) In the case of State emblems other than flags, and of official signs and hallmarks of the countries of the Union, and in the case of armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations, these provisions shall apply only to marks registered more than two months after receipt of the communication provided for in paragraph (3), above.

(7) In cases of bad faith, the countries shall have the right to cancel even those marks incorporating State emblems, signs, and hallmarks, which were registered before November 6, 1925.

(8) Nationals of any country who are authorized to make use of the State emblems, signs, and hallmarks, of their country may use them even if they are similar to those of another country.

(9) The countries of the Union undertake to prohibit the unauthorized use in trade of the State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.

(10) The above provisions shall not prevent the countries from exercising the right given in paragraph (3) of Article 6[quinquies], Section B, to refuse or to invalidate the registration of marks incorporating, without authorization, armorial bearings, flags, other State emblems, or official signs and hallmarks adopted by a country of the Union, as well as the distinctive signs of international intergovernmental organizations referred to in paragraph (1), above.

Article 6[quater]

[*Marks:* Assignment of Marks]

(1) When, in accordance with the law of a country of the Union, the assignment of a mark is valid only if it takes place at the same time as the transfer of the business or goodwill to which the mark belongs, it shall suffice for the recognition of such validity that the portion of the business or goodwill located in that country be transferred to the assignee, together with the exclusive right to manufacture in the said country, or to sell therein, the goods bearing the mark assigned.

(2) The foregoing provision does not impose upon the countries of the Union any obligation to regard as valid the assignment of any mark the use of which by the assignee would, in fact, be of such a nature as to mislead the public, particularly as regards the origin, nature, or essential qualities, of the goods to which the mark is applied.

Article 6[quinquies]

[*Marks:* Protection of Marks Registered in One Country of the Union in the Other Countries of the Union]

A.—

(1) Every trademark duly registered in the country of origin shall be accepted for filing and protected as is in the other countries of the Union, subject to the reservations indicated in this Article. Such countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(2) Shall be considered the country of origin the country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union, the country of the Union where he has his domicile, or, if he has no domicile within the Union but is a national of a country of the Union, the country of which he is a national.

B. — Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases:

1. when they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed;
2. when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;
3. when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order.

This provision is subject, however, to the application of Article 10^{bis}.

C.—

(1) In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.

(2) No trademark shall be refused in the other countries of the Union for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin.

D. — No person may benefit from the provisions of this Article if the mark for which he claims protection is not registered in the country of origin.

E. — However, in no case shall the renewal of the registration of the mark in the country of origin involve an obligation to renew the registration in the other countries of the Union in which the mark has been registered.

F. — The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period fixed by Article 4, even if registration in the country of origin is effected after the expiration of such period.

Article 6^{sexies}

[*Marks:* Service Marks]

The countries of the Union undertake to protect service marks. They shall not be required to provide for the registration of such marks.

Article $6^{septies}$

[*Marks:* Registration in the Name of the Agent or Representative of the Proprietor Without the Latter's Authorization]

(1) If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor's authorization, for the registration of the mark in his own name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favor of the said registration, unless such agent or representative justifies his action.

(2) The proprietor of the mark shall, subject to the provisions of paragraph (1), above, be entitled to oppose the use of his mark by his agent or representative if he has not authorized such use.

(3) Domestic legislation may provide an equitable time limit within which the proprietor of a mark must exercise the rights provided for in this Article.

Article 7
[*Marks:* Nature of the Goods to which the Mark is Applied]

The nature of the goods to which a trademark is to be applied shall in no case form an obstacle to the registration of the mark.

Article 7bis
[*Marks:* Collective Marks]

(1) The countries of the Union undertake to accept for filing and to protect collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.

(2) Each country shall be the judge of the particular conditions under which a collective mark shall be protected and may refuse protection if the mark is contrary to the public interest.

(3) Nevertheless, the protection of these marks shall not be refused to any association the existence of which is not contrary to the law of the country of origin, on the ground that such association is not established in the country where protection is sought or is not constituted according to the law of the latter country.

Article 8
[*Trade Names*]

A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.

Article 9
[*Marks, Trade Names:* Seizure, on Importation, etc.,
of Goods Unlawfully Bearing a Mark or Trade Name]

(1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection.

(2) Seizure shall likewise be effected in the country where the unlawful affixation occurred or in the country into which the goods were imported.

(3) Seizure shall take place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country.

(4) The authorities shall not be bound to effect seizure of goods in transit.

(5) If the legislation of a country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country.

(6) If the legislation of a country permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

Article 10
[*False Indications:* Seizure, on Importation, etc.,
of Goods Bearing False Indications as to their Source
or the Identity of the Producer]

(1) The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.

(2) Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.

Article 10bis
[*Unfair Competition*]

(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

(3) The following in particular shall be prohibited:

1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

Article 10ter
[*Marks, Trade Names, False Indications, Unfair Competition:* Remedies, Right to Sue]

(1) The countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies effectively to repress all the acts referred to in Articles 9, 10, and 10bis.

(2) They undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to in Articles 9, 10, and 10bis, in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.

Article 11
[*Inventions, Utility Models, Industrial Designs, Marks:* Temporary Protection at Certain International Exhibitions]

(1) The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them.

(2) Such temporary protection shall not extend the periods provided by Article 4. If, later, the right of priority is invoked, the authorities of any country may provide that the period shall start from the date of introduction of the goods into the exhibition.

(3) Each country may require, as proof of the identity of the article exhibited and of the date of its introduction, such documentary evidence as it considers necessary.

Article 12
[Special National Industrial Property Services]

(1) Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks.

(2) This service shall publish an official periodical journal. It shall publish regularly:

(a) the names of the proprietors of patents granted, with a brief designation of the inventions patented;

(b) the reproductions of registered trademarks.

Article 13
[Assembly of the Union]

(1)

(a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 13 to 17.

(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2)

(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not hound by Articles 13 to 17;

(iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(iv) elect the members of the Executive Committee of the Assembly;

(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;

(vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;

(vii) adopt the financial regulations of the Union;

(viii) establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union;

(ix) determine which countries not members of the Union and which intergovernmental and international nongovernmental organizations shall be admitted to its meetings as observers;

(x) adopt amendments to Articles 13 to 17;

(xi) take any other appropriate action designed to further the objectives of the Union;

(xii) perform such other functions as are appropriate under this Convention;

(xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3)

(a) Subject to the provisions of subparagraph *(b)*, a delegate may represent one country only.

(b) Countries of the Union grouped under the terms of a special agreement in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 may be jointly represented during discussions by one of their number.

(4)

(a) Each country member of the Assembly shall have one vote.

(b) One–half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph *(b)*, if, in any session, the number of countries represented is less than one–half but equal to or more than one–third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions

concerning its own procedure, all such decisions shall take effect only if the conditions, set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 17(2), the decisions of the Assembly shall require two–thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(5)

(a) Subject to the provisions of subparagraph *(b)*, a delegate may vote in the name of one country only.

(b) The countries of the Union referred to in paragraph (3)*(b)* shall, as a general rule, endeavor to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any such country cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name, provided that each delegation may vote by proxy for one country only. Such power to vote shall be granted in a document signed by the Head of State or the competent Minister.

(6) Countries of the Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(7)

(a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one–fourth of the countries members of the Assembly.

(8) The Assembly shall adopt its own rules of procedure.

Article 14
[Executive Committee]

(1) The Assembly shall have an Executive Committee.

(2)

(a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 16(7)*(b)*, have an ex officio seat on the Committee.

(b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(3) The number of countries members of the Executive Committee shall correspond to one–fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements established in relation with the Union to be among the countries constituting the Executive Committee.

(5)

(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re–elected, but only up to a maximum of two–thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re–election of the members of the Executive Committee.

(6)

(a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly in respect of the draft program and biennial budget of the Union prepared by the Director General;

(iii) *[deleted]*

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;

(vi) perform such other functions as are allocated to it under this Convention.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7)

(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one–fourth of its members.

(8)

(a) Each country member of the Executive Committee shall have one vote.

(b) One–half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) A delegate may represent, and vote in the name of, one country only.

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 15
[International Bureau]

(1)

(a) Administrative tasks concerning the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of industrial property. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property. Furthermore, it shall furnish the International Bureau with all the publications of its industrial property service of direct concern to the protection of industrial property which the International Bureau may find useful in its work.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish any country of the Union with information on matters concerning the protection of industrial property.

(5) The International Bureau shall conduct Studies, and shall provide services, designed to facilitate the protection of industrial property.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

(7)

(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 13 to 17.

(b) The International Bureau may consult with intergovernmental and international non–governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 16
[Finances]

(1)

(a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Union shall be financed from the following sources:

(i) contributions of the countries of the Union;

(ii) fees and charges due for services rendered by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4)

(a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change

class. If it chooses a lower class, the country must announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6)

(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7)

(a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.

(b) The country referred to in subparagraph *(a)* and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 17
[Amendment of Articles 13 to 17]

(1) Proposals for the amendment of Articles 13, 14, 15, 16, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three–fourths of the votes cast, provided that any amendment to Article 13, and to the present paragraph, shall require four–fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three–fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the

countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 18
[Revision of Articles 1 to 12 and 18 to 30]

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For that purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Amendments to Articles 13 to 17 are governed by the provisions of Article 17.

Article 19
[Special Agreements]

It is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention.

Article 20
[Ratification or Accession by Countries of the Union; Entry Into Force]

(1)

(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:

(i) to Articles 1 to 12, or

(ii) to Articles 13 to 17.

(c) Any country of the Union which, in accordance with subparagraph *(b)*, has excluded from the effects of its ratification or accession one of the two groups of Articles referred to in that subparagraph may at any later time declare that it extends the effects of its ratification or accession to that group of Articles. Such declaration shall be deposited with the Director General.

(2)

(a) Articles 1 to 12 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)*(b)*(i), three months after the deposit of the tenth such instrument of ratification or accession.

(b) Articles 13 to 17 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)*(b)*(ii), three months after the deposit of the tenth such instrument of ratification or accession.

(c) Subject to the initial entry into force, pursuant to the provisions of subparagraphs *(a)* and *(b)*, of each of the two groups of Articles referred to in paragraph (1)*(b)*(i) and (ii), and subject to the provisions of paragraph (1)*(b)*, Articles 1 to 17 shall, with respect to any country of the Union, other than those referred to in subparagraphs *(a)* and *(b)*, which deposits an instrument of ratification or accession or any country of the Union which deposits a declaration pursuant to paragraph (1)*(c)*, enter into force three months after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument or declaration deposited. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country of the Union which deposits an instrument of ratification or accession, Articles 18 to 30 shall enter into force on the earlier of the dates on which any of the groups of Articles referred to in paragraph (1)*(b)* enters into force with respect to that country pursuant to paragraph (2)*(a)*, *(b)*, or *(c)*.

Article 21
[Accession by Countries Outside the Union; Entry Into Force]

(1) Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.

(2)

(a) With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force, unless a subsequent date has been indicated in the instrument of accession, on the date upon which provisions first enter into force pursuant to Article 20(2)*(a)* or *(b)*; provided that:

(i) if Articles 1 to 12 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 12 of the Lisbon Act,

(ii) if Articles 13 to 17 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 13 and 14(3), (4), and (5), of the Lisbon Act.

If a country indicates a subsequent date in its instrument of accession, this Act shall enter into force with respect to that country on the date thus indicated.

(b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of one group of Articles of the present Act, this Act shall, subject to the proviso of subparagraph *(a)*, enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

Article 22
[Consequences of Ratification or Accession]

Subject to the possibilities of exceptions provided for in Articles 20(1)*(b)* and 28(2), ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

Article 23
[Accession to Earlier Acts]

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

Article 24
[Territories]

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)

(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

Article 25
[Implementation of the Convention on the Domestic Level]

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 26
[Denunciation]

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 27
[Application of Earlier Acts]

(1) The present Act shall, as regards the relations between the countries to which it applies, and to the extent that it applies, replace the Convention of Paris of March 20, 1883 and the subsequent Acts of revision.

(2)

(a) As regards the countries to which the present Act does not apply, or does not apply in its entirety, but to which the Lisbon Act of October 31, 1958, applies, the latter shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(b) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act applies, the London Act of June 2, 1934, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(c) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act, nor the London Act applies, the Hague Act of November 6, 1925, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(3) Countries outside the Union which become party to this Act shall apply it with respect to any country of the Union not party to this Act or which, although party to this Act, has made a declaration pursuant to Article 20(1)*(b)*(i). Such countries recognize that the said country of the Union may apply, in its relations with them, the provisions of the most recent Act to which it is party.

Article 28
[Disputes]

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, he brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before

the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 29
[Signature, Languages, Depositary Functions]

(1)

(a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the English, German, Italian, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature at Stockholm until January 13, 1968.

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Article 20(1)*(c)*, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 24.

Article 30
[Transitional Provisions]

(1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the Bureau of the Union or its Director, respectively.

(2) Countries of the Union not bound by Articles 13 to 17 may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under Articles 13 to 17 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

(3) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(4) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

II

REVISED DRAFT PROVISIONS FOR THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS/EXPRESSIONS OF FOLKLORE

POLICY OBJECTIVES AND CORE PRINCIPLES

REVISED PROVISIONS FOR THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS/EXPRESSIONS OF FOLKLORE

POLICY OBJECTIVES AND CORE PRINCIPLES*

CONTENTS

* This document is an extract from WIPO document WIPO/GRTKF/IC/9/4. References in it to document WIPO/GRTKF/IC/7/3 refer to an earlier version of the draft objectives and principles contained in that document and discussed at the seventh session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folkore (November 2004). References in this document to the "Committee" are references to that Committee.

III. SUBSTANTIVE PRINCIPLES

1. Subject Matter of Protection
2. Beneficiaries
3. Acts of Misappropriation (Scope of Protection)
4. Management of Rights
5. Exceptions and Limitations
6. Term of Protection
7. Formalities
8. Sanctions, Remedies and Exercise of Rights
9. Transitional Measures
10. Relationship with Intellectual Property Protection and Other Forms of Protection, Preservation and Promotion
11. International and Regional Protection

I. OBJECTIVES

The protection of traditional cultural expressions, or expressions of folklore,[1] *should aim to:*

Recognize value

(i) *recognize that indigenous peoples and traditional and other cultural communities consider their cultural heritage to have intrinsic value, including social, cultural, spiritual, economic, scientific, intellectual, commercial and educational values, and acknowledge that traditional cultures and folklore constitute frameworks of innovation and creativity that benefit indigenous peoples and traditional and other cultural communities, as well as all humanity;*

Promote respect

(ii) *promote respect for traditional cultures and folklore, and for the dignity, cultural integrity, and the philosophical, intellectual and spiritual values of the peoples and communities that preserve and maintain expressions of these cultures and folklore;*

Meet the actual needs of communities

(iii) *be guided by the aspirations and expectations expressed directly by indigenous peoples and by traditional and other cultural communities, respect their rights under national and international law, and contribute to the welfare and sustainable economic, cultural, environmental and social development of such peoples and communities;*

Prevent the misappropriation of traditional cultural expressions/expressions of folklore

(iv) *provide indigenous peoples and traditional and other cultural communities with the legal and practical means, including effective enforcement measures, to prevent the misappropriation of their cultural expressions and derivatives therefrom, control ways in which they are used beyond the customary and traditional context and promote the equitable sharing of benefits arising from their use;*

Empower communities

(v) *be achieved in a manner that is balanced and equitable but yet effectively empowers indigenous peoples and traditional and other cultural communities to exercise rights and authority over their own traditional cultural expressions/expressions of folklore;*

Support customary practices and community cooperation

(vi) *respect the continuing customary use, development, exchange and transmission of traditional cultural expressions/expressions of folklore by, within and*

---

[1] In these provisions, the terms "traditional cultural expressions" and "expressions of folklore" are used as interchangeable synonyms, and may be referred to simply as "TCEs/EoF". The use of these terms is not intended to suggest any consensus among Committee participants on the validity or appropriateness of these or other terms, and does not affect or limit the use of other terms in national or regional laws.

between communities;

Contribute to safeguarding traditional cultures

(vii) *contribute to the preservation and safeguarding of the environment in which traditional cultural expressions/expressions of folklore are generated and maintained, for the direct benefit of indigenous peoples and traditional and other cultural communities, and for the benefit of humanity in general;*

Encourage community innovation and creativity

(viii) *reward and protect tradition-based creativity and innovation especially by indigenous peoples and traditional and other cultural communities;*

Promote intellectual and artistic freedom, research and cultural exchange on equitable terms

(ix) *promote intellectual and artistic freedom, research practices and cultural exchange on terms which are equitable to indigenous peoples and traditional and other cultural communities;*

Contribute to cultural diversity

(x) *contribute to the promotion and protection of the diversity of cultural expressions;*

Promote community development and legitimate trading activities

(xi) *where so desired by communities and their members, promote the use of traditional cultural expressions/expressions of folklore for community-based development, recognizing them as an asset of the communities that identify with them, such as through the development and expansion of marketing opportunities for tradition-based creations and innovations;*

Preclude unauthorized IP rights

(xii) *preclude the grant, exercise and enforcement of intellectual property rights acquired by unauthorized parties over traditional cultural expressions/expressions of folklore and derivatives thereof;*

Enhance certainty, transparency and mutual confidence

(xiii) *enhance certainty, transparency, mutual respect and understanding in relations between indigenous peoples and traditional and cultural communities, on the one hand, and academic, commercial, governmental, educational and other users of TCEs/EoF, on the other.*

[Commentary on Objectives follows]

COMMENTARY

OBJECTIVES

Background

This section contains suggested policy objectives for the protection of TCEs/EoF, which draw on past submissions and statements to the Committee and relevant legal texts. Such objectives could typically form part of a preamble to a law or other instrument.

As the Committee has noted several times, protection of TCEs/EoF should not be undertaken for its own sake, as an end in itself, but as a tool for achieving the goals and aspirations of relevant peoples and communities and for promoting national, regional and international policy objectives. The way in which a protection system is shaped and defined will depend to a large extent on the objectives it is intended to serve. A key initial step, therefore, of the development of any legal regime or approach for the protection of TCEs/EoF is to determine relevant policy objectives.

Changes made by Committee participants to these objectives through their comments and inputs

Several changes have been made to the original draft objectives annexed to WIPO/GRTKF/IC/7/3, in the light of interventions made at the seventh session of the Committee and the written comments received from, amongst others, Colombia, the Islamic Republic of Iran, New Zealand, the United States of America, *l'Organisation africaine de la propriete intellectuelle (OAPI)*, the Saami Council, the Inuit Circumpolar Conference (ICC), the Assembly of First Nations, and the International Trade Mark Association (INTA).

Some of the previous objectives are more in the nature of general guiding principles rather than objectives as such, and have been transferred to that section (see below).[2] These include the objectives relating to respect for and cooperation with relevant international agreements, and complementarity with the protection afforded to TK *stricto sensu*. Some new objectives have been added, such as an objective relating to preventing the misappropriation of TCEs/EoF, as suggested by more than one Committee participant.[3] Two Committee participants in particular suggested that a distinction be made between those objectives more directly related to the protection of TCEs/EoF at the IP interface and other objectives relating to other policy areas which the provisions should take into account and not run counter to.[4] While such objectives may not have been formally set apart in the draft, certain have been rephrased to take these comments into account.

---

2 As noted for example by the Islamic Republic of Iran at the seventh session of the Committee (WIPO/GRTKF/IC/7/15 Prov. par. 78).

3 For example, China at the seventh session of the Committee (WIPO/GRTKF/IC/7/15 Prov. Par. 75), and comments by Colombia and the Saami Council.

4 See intervention by ARIPO at the seventh session (WIPO/GRTKF/IC/7/15 Prov. Par. 89) and comments by New Zealand.

II. GENERAL GUIDING PRINCIPLES

(a) Principle of responsiveness to aspirations and expectations of relevant communities

(b) Principle of balance

(c) Principle of respect for and consistency with international and regional agreements and instruments

(d) Principle of flexibility and comprehensiveness

(e) Principle of recognition of the specific nature and characteristics of cultural expression

(f) Principle of complementarity with protection of traditional knowledge

(g) Principle of respect for rights of and obligations towards indigenous peoples and other traditional communities

(h) Principle of respect for customary use and transmission of TCEs/EoF

(i) Principle of effectiveness and accessibility of measures for protection

[Commentary on General Guiding Principles follows]

COMMENTARY

GENERAL GUIDING PRINCIPLES

Background

The substantive provisions set out in the next section are guided by and seek to give legal expression to certain general guiding principles which have underpinned much of the discussion within the Committee since its inception and in international debate and consultations before the Committee's establishment.

(a) Principle of responsiveness to aspirations and expectations of relevant communities

This principle recognizes that protection for TCEs/EoF should reflect the aspirations and expectations of indigenous peoples and traditional and other cultural communities. This means, in particular, that the protection of TCEs/EoF should recognize and apply indigenous and customary laws and protocols as far as possible, promote complementary use of positive and defensive protection measures, address both cultural and economic aspects of development, prevent insulting, derogatory and offensive acts in particular, promote cooperation among communities and not engender competition or conflicts between them[5], and enable full and effective participation by these communities in the development and implementation of protection systems. Measures for the legal protection of TCEs/EoF should also be recognized as voluntary from the viewpoint of indigenous peoples and other communities who would always be entitled to rely exclusively or in addition upon their own customary and traditional forms of protection against unwanted access and use of their TCEs/EoF. It means that external legal protection against the illicit acts of third parties should not encroach upon or constrain traditional or customary laws, practices and protocols.

(b) Principle of balance

The need for balance has often been emphasized by the diverse stakeholders taking part in discussions concerning the enhanced protection of TCEs/EoF. This principle suggests that protection should reflect the need for an equitable balance between the rights and interests of those that develop, preserve and sustain TCEs/EoF, and of those who use and benefit from them; the need to reconcile diverse policy concerns; and, the need for specific protection measures to be proportionate to the objectives of protection, actual experiences and needs.

(c) Principle of respect for and consistency with international and regional agreements and instruments

TCEs/EoF should be protected in a way that is respectful of and consistent with relevant international and regional instruments, and without prejudice to specific rights and obligations already established under binding legal instruments, including human rights instruments.[6] Protection for TCEs/EoF should not be invoked in order to infringe human rights guaranteed by international law or to limit the scope thereof.

---

5 See Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, 1993, paragraph 2.5, for example.

6 Comment of the Saami Council.

(d) Principle of flexibility and comprehensiveness

This principle concerns a need to recognize that effective and appropriate protection may be achieved by a wide variety of legal mechanisms, and that too narrow or rigid an approach at the level of principle may constrain effective protection, conflict with existing laws to protect TCEs/EoF, and pre-empt necessary consultation with stakeholders and holders of TCEs in particular. It concerns the need to draw on a wide range of legal mechanisms to achieve the intended objectives of protection. In particular, experience with TCEs/EoF protection has shown that it is unlikely that any single "one-size-fits-all" or "universal" international template will be found to protect TCEs comprehensively in a manner that suits the national priorities, legal and cultural environment, and needs of traditional communities in all countries. An indigenous organization has put it best: "Any attempt to devise uniform guidelines for the recognition and protection of indigenous peoples' knowledge runs the risk of collapsing this rich jurisprudential diversity into a single 'model' that will not fit the values, conceptions or laws of any indigenous society."[7]

The draft provisions are therefore broad and inclusive, and intended, while establishing that misappropriation and misuse of TCEs/EoF would be unlawful, to give maximum flexibility to national and regional authorities and communities in relation to which precise legal mechanisms may be used to achieve or implement the provisions at the national or regional levels.[8]

Protection may accordingly draw on a comprehensive range of options, combining proprietary, non-proprietary and non-IP measures, and using existing IP rights, *sui generis* extensions or adaptations of IP rights, and specially-created *sui generis* IP measures and systems, including both defensive and positive measures. Private property rights should complement and be carefully balanced with non-proprietary measures.

This is a relatively common approach in the IP field and previous documents gave examples of IP conventions which establish certain general principles and which give scope for wide variation as to implementation within the laws of the signatories. Even where international obligations create minimum substantive standards for national laws, it is accepted that the choice of legal mechanisms is a matter of national discretion. It is also an approach found in instruments concerning indigenous peoples, such as ILO Convention 169.[9]

(e) Principle of recognition of the specific nature and characteristics of cultural expression

Protection should respond to the traditional character of TCEs/EoF, namely their collective, communal and inter-generational character; their relationship to a community's cultural and social identity and integrity, beliefs, spirituality and values; their often being vehicles for religious and cultural expression; and their constantly evolving character within a

---

7 Four Directions Council, 'Forests, Indigenous Peoples and Biodiversity,' Submission to the Secretariat for the CBD, 1996.

8 See interventions at seventh session of the Committee by, amongst others, Azerbaijan, Japan and the Syrian Arab Republic, and the comments by the Australia, Islamic Republic of Iran and New Zealand.

9 Article 34.

community. Special measures for legal protection should also recognize that in practice TCEs/EoF are not always created within firmly bounded identifiable "communities".

TCEs/EoF are not necessarily always the expression of distinct local identities; nor are they often truly unique, but rather the products of cross-cultural exchange and influence and intra-cultural exchange, within one and the same people whose name or designation may vary on one side or another of a frontier. Culture is carried by and embodied in individuals who move and reside beyond their places of origin while continuing to practice and recreate their community's traditions and cultural expressions.

(f) Principle of complementarity with protection of traditional knowledge

This principle recognizes the often inseparable quality of the content or substance of traditional knowledge *stricto sensu* (TK) and TCEs/EoF for many communities. These draft provisions concern specific means of legal protection against misuse of this material by third parties beyond the traditional context, and do not seek to impose definitions or categories on the customary laws, protocols and practices of indigenous peoples and traditional and other communities. The Committee's established approach of considering the legal protection of TCEs/EoF and of TK *stricto sensu* in parallel but separately is, as previously discussed, compatible with and respectful of the traditional context in which TCEs/EoF and TK are often perceived as integral parts of an holistic cultural identity.

(g) Principle of respect for rights of and obligations towards indigenous peoples and other traditional communities

This principle suggests that any protection of TCEs/EoF should respect and take into account certain over-arching rights and obligations, particularly international human rights and systems of indigenous rights, and not prejudice the further elaboration of such rights and obligations. See further below under "Comments received on earlier version of the general guiding principles (WIPO/GRTKF/IC/7/3)".

(h) Principle of respect for customary use and transmission of TCEs/EoF

Protection should not hamper the use, development, exchange, transmission and dissemination of TCEs/EoF by the communities concerned in accordance with their customary laws and practices. No contemporary use of a TCE/EoF within the community which has developed and maintained it should be regarded as distorting if the community identifies itself with that use of the expression and any modification entailed by that use. Customary use, practices and norms should guide the legal protection of TCEs/EoF as far as possible.

(i) Principle of effectiveness and accessibility of measures for protection

Measures for the acquisition, management and exercise of rights and for the implementation of other forms of protection should be effective, appropriate and accessible, taking account of the cultural, social, political and economic context of indigenous peoples and traditional and other cultural communities.

Changes made by Committee participants to the general guiding principles through their comments and inputs

These revised general guiding principles were prepared in the light of comments received from, amongst others, Colombia, the Islamic Republic of Iran, New Zealand, the United States of America, the Assembly of First Nations, *l'Organisation africaine de la propriété intellectuelle* (OAPI), the Saami Council, the Inuit Circumpolar Conference (ICC) and the International Trademark Association (INTA).

As already noted, commentators observed that some objectives are more in the nature of general guiding principles. They have accordingly been transferred to this section. These include objectives relating to respect for and cooperation with relevant international agreements and complementarity with the protection afforded to TK.

In addition, the new principle (g) follows directly a proposal made by the Tulalip Tribes at the Committee's seventh session[10]. Comments from the Inuit Circumpolar Conference (ICC) and the Saami Council made similar points, which have also been taken into account in the revision of the objectives. The wording of the suggested principle has been drawn from that suggested by the Tulalip Tribes, with adjustments for editorial consistency with the other general guiding principles. The commentary seeks to explain and amplify the principle, again drawing directly from the wording used by the Tulalip Tribes. However, it is not assumed that the suggested wording of principle (g) necessarily fully captures the essence of the wording proposed by the Tulalip Tribes, which was: "Nothing in the application of any principle shall release the State from respecting existing rights and obligations towards holders of TCEs/EoF and TK or prejudice the further elaboration of these rights and obligations."

[10] WIPO/GRTKF/IC/7/15 Prov. Par. 97.

III. SUBSTANTIVE PROVISIONS

ARTICLE 1:

SUBJECT MATTER OF PROTECTION

(a) "Traditional cultural expressions" or "expressions of folklore" are any forms, whether tangible and intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof:

(i) verbal expressions, such as: stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;

(ii) musical expressions, such as songs and instrumental music;

(iii) expressions by action, such as dances, plays, ceremonies, rituals and other performances,

whether or not reduced to a material form; and,

(iv) tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, baskets, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms;

which are:

- *(aa) the products of creative intellectual activity, including individual and communal creativity;*
- *(bb) characteristic of a community's cultural and social identity and cultural heritage; and*
- *(cc) maintained, used or developed by such community, or by individuals having the right or responsibility to do so in accordance with the customary law and practices of that community.*

(b) The specific choice of terms to denote the protected subject matter should be determined at the national and regional levels.

[Commentary on Article 1 follows]

COMMENTARY

ARTICLE 1: SUBJECT MATTER OF PROTECTION

Background

The suggested article describes the subject matter covered by the provisions. Paragraph (a) sets out both a description of the subject matter itself ("traditional cultural expressions" or "expressions of folklore") as well as the substantive criteria which specify more precisely which of those expressions would be protectable. The Committee's discussions have clarified the distinction between description of the subject matter in general, and the more precise delimitation of those TCEs/EoF that are eligible for protection under a specific legal measure. As has been pointed out, not every expression of folklore or of traditional cultures and knowledge could conceivably be the subject of protection within an IP framework.[11]

The suggested article draws upon the WIPO-UNESCO Model Provisions for National Laws for the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, 1982 (the Model Provisions, 1982) and the Pacific Islands Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture, 2002 (the Pacific Model, 2002), as well as existing national copyright laws which provide *sui generis* protection for TCEs/EoF.

Description of subject matter

The words "or combinations thereof" in paragraph (a) are intended to demonstrate that TCEs/EoF can be both tangible and intangible and have both tangible and intangible components ("mixed expressions"), as has been suggested.[12] Paragraph (a) also makes it clear that oral (non-fixed) expressions would also be protectable, responding to the often oral nature of traditional cultural expression. Fixation would therefore not be a requirement for protection.[13] The protection for "architectural forms" could contribute towards the protection of sacred sites (such as sanctuaries, tombs and memorials) to the extent they are the object of misappropriation and misuse as covered by these provisions.

Criteria for protection

In terms of the criteria set out in paragraphs (a) (aa) to (cc), the suggested provision is to the effect that protectable TCEs/EoF should:

(i) be intellectual creations and therefore "intellectual property", including both individual and communal creativity. Differing versions, variations or adaptations of the same expression could qualify as distinct TCEs/EoF if they are sufficiently creative (much like different versions of a work can qualify as copyright works if they are each sufficiently original);

---

11 Intervention by Nigeria (WIPO/GRTKF/IC/6/14, par. 43).
12 Comments and previous statements by the Islamic Republic of Iran.
13 See comments by Colombia.

(ii) have some linkage with a community's cultural and social identity and cultural heritage. This linkage is embodied by the term "characteristic" which is used to denote that the expressions must be generally recognized as representing a communal identity and heritage. The term "characteristic" is intended to convey notions of "authenticity" or that the protected expressions are "genuine", "pertain to" or an "attribute of" a particular people or community. Both "community consensus" and "authenticity" are implicit in the requirement that the expressions, or elements of them, must be "characteristic": expressions which become generally recognized as characteristic are, as a rule, authentic expressions, recognized as such by the tacit consensus of the community concerned;[14]

(iii) still be maintained, developed or used by the community or its individual members.

The notion "heritage" is used to denote materials, intangible or tangible, that have been passed down from generation to generation, capturing the inter-generational quality of TCEs/EoF; an expression must be "characteristic" of such heritage to be protected. It is generally considered by experts that materials which have been maintained and passed between three, or perhaps two, generations form part of "heritage".[15] Expressions which may characterize more recently established communities or identities would not be covered.[16]

Contemporary creativity/individual creators

As discussed in previous documents,[17] many expressions of folklore are handed down from generation to generation, orally or by imitation. Over time, individual composers, singers and other creators and performers might call these expressions to mind and re-use, re-arrange and re-contextualize them in a new way. There is, therefore, a dynamic interplay between collective and individual creativity, in which an infinite number of variations of TCEs/EoF may be produced, both communally and individually.

The individual, therefore, plays a central role in the development and re-creation of traditional cultural expression. In recognition of this, the description of the subject matter in Article 1 includes expressions made by individuals. In order to determine what is or what is not a TCE or EoF, it is therefore not directly relevant whether the expression was made collectively or by an individual. Even a contemporary creative expression made by an individual (such as, for example, a film or video or a contemporary interpretation of pre-existing dances and other performances[18]) can be protected as a TCE/EoF, provided it is characteristic of a community's cultural and social identity and heritage and was made by the individual having the right or responsibility to do so in accordance with the customary law

---

14 See Commentary to the Model Provisions, 1982. See also comments of Colombia.

15 For example, discussions with Professor Edi Sedyawati and others at National Consultation Forum on Intellectual Property and Traditional Knowledge and Cultural Expressions/Folklore, Indonesia, November 30 and December 1, 2004 and UNESCO Expert Meeting on 'Inventorying Cultural Heritage', Paris, March 17 and 18, 2005.

16 See, for example, the concerns in this regard of the International Publishers Association (IPA) as reflected in their comments.

17 See in particular WIPO/GRTKF/IC/6/3.

18 See comments by the Inuit Circumpolar Conference (ICC) which support this approach and provide these examples. See also paras. 2.2 and 2.5 of the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, 1993. Discussions with members of the Scientific Committee of OAPI refer.

and practices of that community. In so far as the *beneficiaries of protection* are concerned, however, the primary focus of these draft provisions is on communal beneficiaries rather than on individuals. Communities are made up of individuals, and thus communal control and regulation of TCEs/EoF ultimately benefits the individuals who make up the relevant communities (see further Article 2 "Beneficiaries").

Choice of terms

Member States and other stakeholders have called for flexibility in regard to terminology, amongst other things. Many international IP standards defer to the national level for determining such matters. Hence, to allow for appropriate national policy and legislative development, consultation and evolution, the suggested sub-paragraph (b) recognizes that detailed decisions on terminology should be left to national and regional implementation.

Changes made by Committee participants to this provision through their comments and inputs

Previously, the description of the subject matter and the criteria for protection were set out in two provisions, B.1 and B.2. However, B.1 was drawn almost directly from the Model Provisions, 1982, and contained some criteria which overlapped with B.2, as some commentators pointed out. Thus, the former B.1 and B.2 have been consolidated into one provision.

Previous discussions also suggested that the definition in the Model Provisions, 1982 was, while a useful starting point, dated and in need of further consideration. The revised article draws from the Model Provisions, 1982 but also more directly from other more recent models, such as the Pacific Model, 2002. The word "folk" has been removed as suggested, and other refinements to the language and structure have been made in response to various comments and other inputs. A specific reference to body-painting has been added because of the importance of this form of expression to communities and possible uncertainty as to whether it is sufficiently "tangible" to qualify as a tangible TCE/EoF.[19]

The revised provision is intended to be more precise and clear, in response to comments that the scope of subject matter appeared too wide and imprecise.[20] The criteria that determine which TCEs/EoF are protectable further delimit this scope; in addition, the nature of the protection provided by the provisions, notably in Article 3 'Acts of Misappropriation (Scope of Protection)', further clarify the reach of the provisions.

One country suggested deletion of the criterion in paragraph (ii) of the former provision B. 2 (which read: "characteristic of a community's distinctive cultural identity and traditional heritage developed and maintained by it"), because it would impose too heavy a burden of proof on communities.[21] This suggestion certainly merits further consideration.

Previous discussions have also addressed the place and role of individuals in the creation and "ownership" of TCEs/EoF. Certain comments also did so, as did other inputs

---

19 See discussions in WIPO/GRTKF/IC/5/3.

20 For example, comments of the European Community and its Member States and the International Publishers Association (IPA).

21 See comments of Colombia.

received.[22] The provisions and commentary have been adjusted in an effort to deal more adequately with these issues, but further reflection might be necessary.

More generally, Colombia suggested that it would be useful to produce a glossary of terms in order to make the provisions easier to understand and to achieve a unified understanding of the articles. OAPI also suggested a definitions section.

Several other changes were made to the previous B.1 and B.2, taking into account comments made by, amongst others, Australia, Colombia, the European Union and its Member States, the Islamic Republic of Iran, the United States of America, the Assembly of First Nations, the International Publishers Association (IPA), *l'Organisation africaine de la propriete intellectuelle* (OAPI), the International Trade Mark Association (INTA) and the Saami Council.

[22] For example, see discussions at WIPO Asia and the Pacific Regional Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Daejeon, Republic of Korea, October 11 to 13, 2004 and at fifth and sixth sessions of the Committee; comments of the United States of America; and discussions with members of the Scientific Committee of OAPI, in particular, on this point, with Professor Kouliga Nikiema, Burkina Faso.

ARTICLE 2:

BENEFICIARIES

Measures for the protection of traditional cultural expressions/expressions of folklore should be for the benefit of the indigenous peoples and traditional and other cultural communities:[23]

(i) in whom the custody, care and safeguarding of the TCEs/EoF are entrusted in accordance with their customary law and practices; and

(ii) who maintain, use or develop the traditional cultural expressions/expressions of folklore as being characteristic of their cultural and social identity and cultural heritage.

[Commentary on Article 2 follows]

23 The broad and inclusive term "indigenous peoples and traditional and other cultural communities", or simply "communities" in short, is used at this stage in these draft provisions. The use of these terms is not intended to suggest any consensus among Committee participants on the validity or appropriateness of these or other terms, and does not affect or limit the use of other terms in national or regional laws.

COMMENTARY

ARTICLE 2: BENEFICIARIES

Background

Many stakeholders have emphasized that TCEs/EoF are generally regarded as collectively originated and held, so that any rights and interests in this material should vest in communities rather than individuals. Some laws for the protection of TCEs/EoF provide rights directly to concerned peoples and communities. On the other hand, many vest rights in a Governmental authority, often providing that proceeds from the granting of rights to use the TCEs/EoF shall be applied towards national heritage, social welfare and culture related programs. The African Group has stated that principles for the protection of TCEs/EoF should 'Recognize the role of the State in the preservation and protection of traditional knowledge and expressions of folklore.'[24]

The suggested provision is sufficiently flexible to accommodate both approaches at the national level – while the beneficiaries of protection should directly be the concerned peoples and communities, the rights themselves could be vested either in the peoples or communities, or in an agency or office (see also Article 4 "Management of Rights").

Article 2, and the provisions as a whole, contemplate that more than one community may qualify for protection of their TCEs/EoF in line with the criteria in Article 1. Existing *sui generis* laws provide for this possibility, such as the Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples for the Protection and Defence of their Cultural Identity and their Traditional Knowledge of Panama, 2000 and the related Executive Decree of 2001 ("the Panama Law")[25], and the Peruvian Law of 2002 Introducing a Protection Regime for the Collective Knowledge of Indigenous Peoples Derived from Biological Resources ("the Peru Law, 2002").[26] This also touches upon the allocation of rights or distribution of benefits among communities which share the same or similar TCEs/EoF in different countries (so-called "regional folklore").[27] This is dealt with further in Articles 4, "Management of Rights" and 7, "Formalities".

The term "cultural communities" is intended to be broad enough to include also the nationals of an entire country, a "nation", in cases where TCEs/EoF are regarded as "national folklore" and belonging to all of the people of a particular country.[28] This complements and accords with the practice in other policy areas.[29] Therefore, a national law could, for example, state that all nationals are the beneficiaries of protection.

---

24 WIPO/GRTKF/IC/6/12. See also interventions at the seventh session of the Committee by, for example, Morocco (WIPO/GRTKF/IC/7/15 Prov. Para. 85).

25 Article 5, Decree.

26 Article 10.

27 See comments of the European Union and its Member States and the Russian Federation.

28 See statement by Egypt and Morocco at the Committee's seventh session (WIPO/GRTKF/IC/7/15 Prov.), paras. 69 and 85, and others.

29 See Glossary on Intangible Cultural Heritage, Netherlands National Commission for UNESCO, 2002 (". . . a nation can be a cultural community").

Communities/individuals

As discussed in relation to Article 1, these provisions are intended primarily to benefit communities, including in cases where a TCE/EoF is created or developed by an individual member of a community. The essential characteristics of "traditional" creations are that they contain motifs, a style or other items that are characteristic of and identify a tradition and a community that still bears and practices it. Thus, even where an individual has developed a tradition-based creation within his or her customary context, it is regarded from a community perspective as the product of social and communal creative processes. The creation is, therefore, not "owned" by the individual but "controlled" by the community, according to indigenous and customary legal systems and practices.[30] This is what marks such a creation as "traditional".

For these reasons, the benefits of the protection envisaged in these provisions accrue to communities and not individuals – this is what distinguishes this *sui generis* system from conventional IP law which remains available to the individual should he or she wish to take advantage of it (see Article 10). This approach accords with the view articulated by Committee participants that these provisions should aim to provide forms of protection for expressions of culture and knowledge not currently available under conventional and existing IP law.[31]

However, communities are made up of individuals, and thus communal control and regulation of TCEs/EoF ultimately benefits the individuals who make up the relevant community. Thus, in practice, it is individuals who will benefit, in accordance with customary law and practices.

Changes made by Committee participants to this provision through their comments and inputs

As compared with the former B.3 in document WIPO/GRTKF/IC/7/3, changes have been made to this provision to take into account comments from, amongst others, Australia, the European Union and its Member States, the Russian Federation, the United States of America and *l'Organisation africaine de la propriété intellectuelle (OAPI)*.

[30] See generally WIPO/GRTKF/IC/6/3, and in particular the intervention of the Tulalip Tribes of Washington, Committee Fifth Session (WIPO/GRTKF/IC/5/15, par. 56).

[31] Interventions at Committee sessions by Nigeria and Japan, amongst others.

ARTICLE 3:

ACTS OF MISAPPROPRIATION (SCOPE OF PROTECTION)

Traditional cultural expressions/expressions of folklore of particular value or significance

(a) In respect of traditional cultural expressions/expressions of folklore of particular cultural or spiritual value or significance to a community, and which have been registered or notified as referred to in Article 7, there shall be adequate and effective legal and practical measures to ensure that the relevant community can prevent the following acts taking place without its free, prior and informed consent:

(i) in respect of such traditional cultural expressions/expressions of folklore other than words, signs, names and symbols:

- *the reproduction, publication, adaptation, broadcasting, public performance, communication to the public, distribution, rental, making available to the public and fixation (including by still photography) of the traditional cultural expressions/expressions of folklore or derivatives thereof;*

- *any use of the traditional cultural expressions/expressions of folklore or adaptation thereof which does not acknowledge in an appropriate way the community as the source of the traditional cultural expressions/expressions of folklore;*

- *any distortion, mutilation or other modification of, or other derogatory action in relation to, the traditional cultural expressions/expressions of folklore; and*

- *the acquisition or exercise of IP rights over the traditional cultural expressions/expressions of folklore or adaptations thereof;*

(ii) in respect of words, signs, names and symbols which are such traditional cultural expressions/expressions of folklore, any use of the traditional cultural expressions/expressions of folklore or derivatives thereof, or the acquisition or exercise of IP rights over the traditional cultural expressions/expressions of folklore or derivatives thereof, which disparages, offends or falsely suggests a connection with the community concerned, or brings the community into contempt or disrepute;

Other traditional cultural expressions/expressions of folklore

(b) In respect of the use and exploitation of other traditional cultural expressions/expressions of folklore not registered or notified as referred to in Article 7, there shall be adequate and effective legal and practical measures to ensure that:

(i) the relevant community is identified as the source of any work or other production adapted from the traditional cultural expression/expression of folklore;

(ii) any distortion, mutilation or other modification of, or other derogatory action in relation to, a traditional cultural expression/expression of folklore can be prevented and/or is subject to civil or criminal sanctions;

(iii) any false, confusing or misleading indications or allegations which, in relation to goods or services that refer to, draw upon or evoke the traditional cultural expression/expression of folklore of a community, suggest any endorsement by or linkage with that community, can be prevented and/or is subject to civil or criminal sanctions; and

(iv) where the use or exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on terms determined by the Agency referred to in Article 4 in consultation with the relevant community; and

Secret traditional cultural expressions/expressions of folklore

(c) There shall be adequate and effective legal and practical measures to ensure that communities have the means to prevent the unauthorized disclosure, subsequent use of and acquisition and exercise of IP rights over secret traditional cultural expressions/expressions of folklore.

[Commentary on Article 3 follows]

COMMENTARY

ARTICLE 3: ACTS OF MISAPPROPRIATION (SCOPE OF PROTECTION)

Background

This draft article addresses a central element of protection, that is, the misappropriations of TCEs/EoF covered by the provisions and the rights and other measures that would apply in each case.

As Committee participants have stressed should be the case,[32] the article aims to provide forms of protection for expressions of culture and knowledge not currently available under conventional and existing IP law. These provisions are without prejudice to protection for TCEs/EoF already available under current IP law.[33] Conventional IP protection remains available. See further commentary to Articles 2 "Beneficiaries" and 10 "Relationship with Intellectual Property and Other Forms of Protection and Preservation".

The suggested provision seeks to address the kinds of IP-related uses and appropriations of TCEs/EoF which most often cause concern to indigenous and local communities and other custodians and holders of TCEs/EoF, as identified by them in earlier fact-finding and consultations (see paragraph 53 of document WIPO/GRTKF/IC/7/3). It draws from a wide range of approaches and legal mechanisms embodied in various national and regional laws (see paragraphs 54 to 56 of document WIPO/GRTKF/IC/7/3).

Summary of draft provision

In brief, the draft provision suggests three "layers" of protection, intended to provide supple protection that is tailored to different forms of cultural expression and the various objectives associated with their protection, reflecting a combination of exclusive and equitable remuneration rights and a mix of legal and practical measures:

(a) for TCEs/EoF of particular cultural or spiritual value to a community, a right of "free, prior and informed consent" (PIC), akin to an exclusive right in IP terms, is suggested, in terms of which the kinds of acts usually covered by IP laws, especially copyright, related rights, trademarks and designs, would be subject to the PIC of the relevant community.

(i) This layer of protection would be subject to prior notification or registration in a public register as provided for under Article 7 (see below). Registration or notification is optional only and for decision by relevant communities. There would be no need to register or notify secret TCEs/EoF because secret TCEs/EoF are separately protected under Article 3 (c). This registration option is applicable only in cases where communities wish to obtain strict, prior informed consent protection for TCEs/EoF which are already known and publicly available.

(ii) The right of PIC would grant a community the right either to prevent or authorize, on agreed terms including on benefit-sharing, the use of the TCEs/EoF. As such, PIC is akin to an exclusive IP right which may be, but need not be, licensed. These rights

[32] Interventions at Committee sessions by Nigeria and Japan, amongst others.
[33] See comments by Colombia.

could be used positively or, which is more likely perhaps, defensively (to prevent any use and exploitation of these TCEs/EoF and acquisition of IP rights over them).

(iii) Specific tailored forms of protection are suggested for words, names, symbols and other designations, drawing on trademark law and special measures already established in this regard in the Andean Community, New Zealand and the United States of America.

(iv) In respect of performances which qualify as TCEs/EoF (TCEs/EoF which are 'expressions by action': see Article 1), these may also be registered or notified and so be protected strongly, as suggested. The moral and economic rights proposed include rights modeled on the kinds of rights already provided to other performers, including by in particular the WIPO Performances and Phonograms Treaty, 1996 (WPPT, 1996). This form of protection is without prejudice to the protection available under the WPPT.[34] If such performances were not so registered or notified, they could be protected under (b) or (c) below, depending on the circumstances and the community's wishes.

(b) For TCEs/EoF not so registered or notified, their use would not be subject to prior authorization but protection would concern *how* the TCEs/EoF were used. These TCEs/EoF could be used, as a source of creative inspiration for example, without the need for prior consent or authorization, in furtherance of creativity and artistic freedom, a key objective as many have stated.[35] However, how the TCEs/EoF are so used would be regulated, drawing mainly upon moral rights and unfair competition principles, with civil and criminal remedies proposed, as well as the payment of an equitable remuneration or equitable benefit-sharing, to be determined by a competent authority. This authority could be the same Agency as referred to in Article 4 "Management of Rights". This approach is akin perhaps to a compulsory license or equitable remuneration approach, found in national *sui generis* laws concerning TCEs/EoF[36], as well as in conventional copyright law concerning musical works already fixed in sound recordings.[37]

(c) Finally, for secret, confidential or undisclosed TCEs/EoF, the suggested provision seeks to clarify that existing protection for confidential or undisclosed information covers TCE-related subject matter, building also upon case-law to this effect.[38] The Mataatua Declaration, 1993 recognizes, amongst other things, that indigenous peoples have the right to "protect and control dissemination" of [their] knowledge.[39]

Flexibility as to legal mechanisms for implementation

The provisions are broad and inclusive, and intended to give flexibility to national and regional authorities and communities in relation to which precise legal mechanisms may be selected at the national or regional levels to implement them.

---

34 See comments of Colombia.

35 For examples, interventions by Azerbaijan and the European Community and its Member States, seventh session of the Committee (WIPO/GRTKF/IC/7/15 Prov.).

36 Such as the Bangui Accord, OAPI, as revised in 1999.

37 Article 13, Berne Convention, 1971.

38 Foster v. Mountford (1976) 29 FLR 233.

39 Article 2.1.

To illustrate this point with a practical example – the suggested principle which states that there ought to be protection against false or misleading indications in trade as to the endorsement by or linkage with a community of tradition-based creations (a typical example is a handicraft sold as 'authentic' or 'Indian' when it is not) could be implemented in practice at the national level through *one or more* of the following: (i) the registration and use of certification trademarks by concerned communities; (ii) civil and/or criminal remedies available under general trade practices and labeling laws; (iii) enactment of legislation specifically to provide this form of protection for TCEs/EoF; (iv) the registration and use of geographical indications; and/or (v) common law remedies for "passing off" and laws for the suppression of unfair competition.

Derivative works

Some key policy and legal questions pivot on the adaptation right, the right to make derivative works and on the setting of appropriate exceptions and limitations in this regard.[40]

The suggested provision suggests an adaptation right in respect of TCEs/EoF of particular cultural or spiritual value, subject to prior registration or notification. In respect of other TCEs/EoF, there would be no adaptation right as such, nor prevention of the obtaining of IP rights in the derivative work by its creator. Nor would, in either case, mere "inspiration" be prevented, as is also the case in copyright law, in line with the idea/expression dichotomy.[41] However, it is suggested there be regulation of how derivative works may be exploited, following the general approach of the Pacific Model Law, 2002.

Changes made by Committee participants to this provision through their comments and inputs

Several structural, formatting and substantive changes were made to the earlier version of this article, which was B.5 in document WIPO/GRTKF/IC/7/3, in the light of interventions made at the seventh session of the Committee by, amongst others, Azerbaijan, Egypt and Japan, comments made by Australia, Colombia, the European Union and its Member States, the United States of America, the Assembly of First Nations, the Saami Council, the International Publishers Association, and the International Trademark Association (INTA), and during other discussions, with the Scientific Committee of OAPI for example.

Following comments made in particular by the African Group and Egypt at the Committee's seventh session, this article now more clearly refers to the term "misappropriation". The rights set out in the previous provision B.5 each corresponded to specific acts of misappropriation without using the term as such, and this has now been rectified.

Following interventions at the seventh session and other comments, performances which are TCEs/EoF are no longer treated as a distinct "layer" in the draft article. They may be protected either in accordance with one of the suggested "layers" in (a), (b) or (c) of the article, in accordance with the community's wishes; in addition, more conventional protection for performers of "expressions of folklore" remains available under the WPPT, 1996, as Colombia and others pointed out.[42]

---

40 See also comments of Australia, and WIPO/GRTKF/IC/5/3 and subsequent documents.

41 Discussed in WIPO/GRTKF/IC/6/3.

42 See comments of Colombia.

ARTICLE 4:

MANAGEMENT OF RIGHTS

(a) Prior authorizations to use traditional cultural expressions/expressions of folklore, when required in these provisions, should be obtained either directly from the community concerned where the community so wishes, or from an agency acting at the request, and on behalf, of the community (from now on referred to as "the Agency"). Where authorizations are granted by the Agency:

(i) such authorizations should be granted only in appropriate consultation with the relevant community, in accordance with their traditional decision-making and governance processes;

(ii) any monetary or non-monetary benefits collected by the Agency for the use of the traditional cultural expressions/expressions of folklore should be provided directly by it to the community concerned.

(b) The Agency should generally be tasked with awareness-raising, education, advice and guidance functions. The Agency should also:

(i) where so requested by a community, monitor uses of traditional cultural expressions/expressions of folklore for purposes of ensuring fair and appropriate use as provided for in Article 3 (b); and,

(ii) establish the equitable remuneration referred to in Article 3 (b) in consultation with the relevant community.

[Commentary on Article 4 follows]

COMMENTARY

ARTICLE 4: MANAGEMENT OF RIGHTS

Background

This provision deals with how and to whom authorizations to use TCEs/EoF are applied for and related questions. The matters dealt with in this provision should apply regardless of whether communities or State-appointed bodies are the rights holders (see Article 2 "Beneficiaries" above).

The provisions as a whole envisage the exercise of rights by the relevant communities themselves. However, in cases where the relevant communities are not able or do not wish to exercise the rights directly, this draft article suggests a role for an "Agency", acting at all times at the request of and on behalf of relevant communities. A role for such an "Agency" is entirely optional, and only necessary and appropriate if the relevant communities so wish.

An agency fulfilling these kinds of roles is provided for in the Model Provisions, 1982, the Indigenous Peoples Rights Act of 1997 of the Philippines (the Philippines Law, 1997), the Pacific Model Law, 2002 and in many national laws providing *sui generis* protection for TCEs/EoF. Several Member States have expressed support for an 'authority' in such cases.[43]

An agency such as that suggested could be an existing office, authority or society, and also a regional organization or office. The African Regional Intellectual Property Organization (ARIPO) and *l'Organisation africaine de la propriete intellectuelle (OAPI)* have, for example, noted the possible role of regional organizations in relation to the protection of TCEs/EoF and TK.[44] Copyright collecting societies could also play a role.

This provision seeks to identify only certain core principles that could apply. Clearly the elaboration of such measures will depend greatly on national and community factors: options for more detailed provisions could be further developed at the national and community levels. Existing laws and models have detailed provisions that could be drawn from.

Changes made by Committee participants to this provision through their comments and inputs

As compared with the corresponding provision B.4 in document WIPO/GRTKF/IC/7/3, changes have been made to take into account statements by, amongst others, Japan at the seventh session of the Committee, as well as the written comments of Colombia, the European Union and its Member States, the United States of America, the Assembly of First Nations and the Saami Council. Some of these interventions and comments had also indicated that provision B.4 had been too detailed and prescriptive. Colombia and the Saami Council in particular expressed serious reservations about any agency or authority acting on

---

43 African Group (WIPO/GRTKF/IC/6/12); interventions at the seventh session of the Committee by the European Union and its Member States, Japan and Morocco (WIPO/GRTKF/IC/7/15 Prov.); comments of the European Union and its Member States.

44 For example, intervention by ARIPO at seventh session of the Committee (WIPO/GRTKF/IC/7/15 Prov. Para. 89) and previously.

behalf of indigenous peoples. This underscores the need for any agency or authority to derive its entitlement to act from the explicit wishes and authority of the community concerned.

ARTICLE 5:

EXCEPTIONS AND LIMITATIONS

(a) Measures for the protection of TCEs/EoF should:

(i) not restrict or hinder the normal use, transmission, exchange and development of TCEs/EoF within the traditional and customary context by members of the relevant community as determined by customary laws and practices;

(ii) extend only to utilizations of TCEs/EoF taking place outside the traditional or customary context, whether or not for commercial gain; and,

(iii) not apply to utilizations of TCEs/EoF in the following cases:

- by way of illustration for teaching and learning;
- non-commercial research or private study;
- criticism or review;
- reporting news or current events;
- use in the course of legal proceedings;
- the making of recordings and other reproductions of TCEs/EoF for purposes of their inclusion in an archive or inventory for non-commercial cultural heritage safeguarding purposes; and
- incidental uses,

provided in each case that such uses are compatible with fair practice, the relevant community is acknowledged as the source of the TCEs/EoF where practicable and possible, and such uses would not be offensive to the relevant community.

(b) Measures for the protection of TCEs/EoF could allow, in accordance with custom and traditional practice, unrestricted use of the TCEs/EoF, or certain of them so specified, by all members of a community, including all nationals of a country.

[Commentary on Article 5 follows]

COMMENTARY

ARTICLE 5: EXCEPTIONS AND LIMITATIONS

Background

Many stakeholders have stressed that any IP-type protection of TCEs should be subject to certain limitations so as not to protect them too rigidly. It has been suggested that overly strict protection may stifle creativity, artistic freedom and cultural exchanges, as well as be impracticable in its implementation, monitoring and enforcement.

In addition, the protection of TCEs/EoF should not prevent communities themselves from using, exchanging and transmitting amongst themselves expressions of their cultural heritage in traditional and customary ways and in developing them by continuous recreation and imitation, as has been emphasized.

This suggested provision puts forward certain exceptions and limitations for consideration:

(a) paragraph (a) implements objectives and general guiding principles associated with non-interference in and support for the continued use and development of TCEs/EoF by communities, while (b) affirms that these provisions would apply only to '*ex situ*' uses of TCEs/EoF, namely uses outside the customary or traditional context, whether for commercial purposes or not;

(b) paragraph (c) sets out exceptions drawn from the Model Provisions, 1982, the Pacific Islands Model Law, 2002 and copyright laws in general. Certain more specific comments include:

(i) Limitations and exceptions for teaching purposes are common in copyright laws. While these are sometimes limited to "face-to-face" teaching (as also in the Pacific Model, 2002), special limitations and exceptions to copyright and related rights for distance learning have also been raised for discussion.[45] The term "teaching and learning" is used for present purposes.

(ii) National copyright laws in some cases allow public archives, libraries and the like to make, for non-commercial safeguarding purposes only, reproductions of works and expressions of folklore and keep them available for the public[46], and this is envisaged. In this respect, appropriate contracts, IP check-lists and other guidelines and codes of conduct for museums, archives and inventories of cultural heritage are under development by WIPO. Specific limitations for libraries and archives in copyright law in general have also been raised for discussion.[47]

---

45 See Proposal by Chile (SCCR/12/3) on the Subject "Exceptions and limitations to copyright and related rights", discussed at the 12th session of the WIPO Standing Committee on Copyright and Related Rights (SCCR), November 2004.

46 An example is the United Kingdom's Copyright, Designs and Patents Act, 1988, Schedule 2, par. 14.1.

47 See Proposal by Chile, above.

(iii) Not all typical copyright exceptions may be appropriate, however, as they might undermine community interests and customary rights – for example, incidental use exceptions which allow a sculpture or work of artistic craftsmanship permanently displayed in a public place to be reproduced in photographs, drawings and in other ways without permission. Thus, exceptions which would be offensive are excluded.

Changes made by Committee participants to this provision through their comments and inputs

There were relatively few comments on this provision, but comments were provided by Colombia, the European Union and its Member States, the Islamic Republic of Iran, the United States of America, and the Saami Council. Discussions held with members of the Scientific Committee of *l'Organisation africaine de la propriete intellectuelle (OAPI)* also identified difficulties with paragraph (c) of the previous provision B. 6 as it was felt that a general application of typical IP exceptions and limitations to TCEs/EoF was too imprecise.[48] The new formulation seeks to address this concern by providing greater precision, drawing from the Model Provisions, 1982, the Pacific Islands Model Law, 2002 and copyright laws in general. On the other hand, Colombia suggested a broader statement of principle (referring for example to cultural interest and/or the existence or otherwise of gainful intent), leaving it to Member States to establish those exceptions and limitations it wishes.

[48] Discussions with the Scientific Committee of *l'Organisation africaine de la propriete intellectuelle*; intervention by Morocco at the seventh session of the Committee (WIPO/GRTKF/IC/7/15 Prov. Para. 85).

ARTICLE 6:

TERM OF PROTECTION

Protection of traditional cultural expressions/expressions of folklore should endure for as long as the traditional cultural expressions/expressions of folklore continue to meet the criteria for protection under Article 1 of these provisions, and,

(i) in so far as TCEs/EoF referred to in Article 3 (a) are concerned, their protection under that sub-article shall endure for so long as they remain registered or notified as referred to in Article 7; and,

(ii) in so far as secret TCEs/EoF are concerned, their protection as such shall endure for so long as they remain secret.

[Commentary on Article 6 follows]

COMMENTARY

ARTICLE 6: TERM OF PROTECTION

Background

Many indigenous peoples and traditional communities desire indefinite protection for at least some aspects of expressions of their traditional cultures. Calls for indefinite protection are closely linked to calls for retroactive protection (see Article 9 "Transitional Measures" below). On the other hand, it is generally seen as integral to the balance within the IP system that the term of protection not be indefinite, so that works ultimately enter the 'public domain'.[49]

The suggested provision embodies a trademark-like emphasis on current use, so that once the community that the TCE is characteristic of no longer uses the TCE or no longer exists as a distinct entity (analogous to abandonment of a trademark, or a trademark becoming generic), protection for the TCE would lapse. Such an approach draws upon the very essence of the subject matter of protection, it being recalled that at the heart of TCEs/EoF is that they are characteristic of and identify a community (see above). When a TCE ceases to do so, it ceases by definition to be a TCE and it follows that protection should lapse.

In addition to this general principle, specific provision is made for the term of protection of two categories, namely those TCEs/EoF which are registered or notified and those that are secret, undisclosed or confidential.

Changes made by Committee participants to this provision through their comments and inputs

Several interventions during the seventh session of the Committee and some written comments suggested that a single term covering all TCEs/EoF was inappropriate and that different terms could be envisaged for different forms of TCE/EoF.[50] Indeed, different forms of IP are protected for different lengths of time. On the other hand, literary and artistic works and performances are generally protected for the same period, while marks are potentially protectable for an indefinite period. The suggested provision merges these ideas to suggest a potentially indefinite term for all three forms of TCE/EoF, subject to new specific provisions for certain TCEs/EoF, namely registered or notified TCEs/EoF and secret TCEs/EoF. However, this aspect, and the subject matter of the provision as a whole, requires further reflection, as several Committee participants have pointed out.[51]

---

49 See for example the comments of the European Union and its Member States.

50 See for example statements by Japan and Morocco (WIPO/GRTKF/IC/7/15 Prov., Paras. 68 and 85).

51 See, for example, intervention of the Islamic Republic of Iran at the Committee's seventh session (WIPO/GRTKF/IC/7/15 Prov. Para. 78) and comments of the European Union and its Member States, the United States of America and the International Trademark Association (INTA). Discussions at the WIPO Asia and the Pacific Regional Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Daejeon, Republic of Korea, October 11 to 13, 2004 also identified a need for careful consideration of this provision.

A number of comments suggested removal of paragraph (b) of the earlier provision B. 7, and this change has been made.[52]

Other comments relating to this provision were those from Colombia, the European Union and its Member States, the Russian Federation, the United States of America, the Assembly of First Nations, the Saami Council and the International Trademark Association (INTA).

[52] See comments of OAPI and the Assembly of First Nations.

ARTICLE 7:

FORMALITIES

(a) As a general principle, the protection of traditional cultural expressions/expressions of folklore should not be subject to any formality. Traditional cultural expressions/expressions of folklore as referred to in Article 1 are protected from the moment of their creation.

(b) Measures for the protection of specific traditional cultural expressions/expressions of folklore of particular cultural or spiritual value or significance and for which a level of protection is sought as provided for in Article 3(a) should require that such traditional cultural expressions/expressions of folklore be notified to or registered with a competent office or organization by the relevant community or by the Agency referred to in Article 4 acting at the request of and on behalf of the community.

(i) To the extent that such registration or notification may involve the recording or other fixation of the traditional cultural expressions/expressions of folklore concerned, any intellectual property rights in such recording or fixation should vest in or be assigned to the relevant community.

(ii) Information on and representations of the traditional cultural expressions/expressions of folklore which have been so registered or notified should be made publicly accessible at least to the extent necessary to provide transparency and certainty to third parties as to which traditional cultural expressions/expressions of folklore are so protected and for whose benefit.

(iii) Such registration or notification is declaratory and does not constitute rights. Without prejudice thereto, entry in the register presumes that the facts recorded therein are true, unless proven otherwise. Any entry as such does not affect the rights of third parties.

(iv) The office or organization receiving such registrations or notifications should resolve any uncertainties or disputes as to which communities, including those in more than one country, should be entitled to registration or notification or should be the beneficiaries of protection as referred to in Article 2, using customary laws and processes, alternative dispute resolution (ADR) and existing cultural resources, such as cultural heritage inventories, as far as possible.

[Commentary on Article 7 follows]

COMMENTARY

ARTICLE 7: FORMALITIES

Background

It has been suggested that the acquisition and maintenance of protection should be practically feasible, especially from the point of view of traditional communities, and not create excessive administrative burdens for right holders or administrators alike.[53] Equally important, is the need, expressed by several stakeholders such as external researchers and other users of TCEs/EoF, for certainty and transparency in their relations with communities.

A key choice is whether or not to provide for automatic protection or for some kind of registration:

(a) a first option is to require some form of registration, possibly subject to formal or substantive examination. A registration system may merely have declaratory effect, in which case proof of registration would be used to substantiate a claim of ownership, or it may constitute rights. Some form of registration may provide useful precision, transparency and certainty on which TCEs are protected and for whose benefit;

(b) a second option would be to require automatic protection without formalities, so that protection would be available as of the moment a TCE is created, similar to copyright.

The suggested provision combines these two approaches.

First, paragraph (a) suggests as a general principle that TCEs/EoF should be protected without formality, following copyright principles and in an endeavor to make protection as easily available as possible.

Second, some form of registration or notification is, however, proposed for those TCEs/EoF for which, under Article 3 (a), would receive the strongest protection:

(i) registration or notification is optional only and a matter for decision by relevant communities. Registration or notification is not an obligation; protection remains available under Article 3 (b) for unregistered TCEs/EoF. There would be no need to register or notify secret TCEs/EoF because secret TCEs/EoF are separately protected under Article 3 (c). This registration option is applicable only in cases where communities wish to obtain strict, prior informed consent protection for TCEs/EoF which are already known and publicly available;

(ii) the provision draws broadly from existing copyright registration systems, the Database of Native American Insignia in the United States of America[54], the Panama Law, 2000, the Andean Decision 351, and the Peru Law, 2002 (see generally WIPO/GRTKF/IC/7/3 and earlier documents for information on these laws);

---

53 See also comments of the Assembly of First Nations.

54 Described and discussed in previous documents, such as WIPO/GRTKF/IC/5/3.

(iii) a regional organization could conceivably administer such a registration or notification system. ARIPO and OAPI have, for example, noted the role of regional organizations in this area.[55] While these provisions may have initial application at the national level, thus implying national registers or other notification systems, eventually some form of regional and international register could form part of possible eventual regional and international systems of protection. Such an international system of notification/registration could perhaps draw from existing systems such as Article 6*ter* of the Paris Convention or the registration system provided for in Article 5 of the Lisbon Agreement for the International Registration of Appellations of Origin, 1958;

(iv) it is suggested that the office or organization at which such registrations or notifications may be made, and which would seek to resolve disputes, should not be the same as the Agency referred to in Article 4;[56]

(v) it is made clear that it is only a community which claims protection of a particular TCE/EoF that can register or notify the TCE/EoF, or, in cases where the community is not able to do so, the Agency referred to in Article 4, acting at the request and in the interests of the community;[57]

(vi) in resolving disputes between communities, including communities from more than one country, the draft article suggests that the registration office or organization use customary laws and processes and alternative dispute resolution (ADR) as far as possible. These are suggested in order to achieve as far as possible objectives and principles relating to customary law and non-conflict between communities. In so far as taking existing cultural resources into account, the office or organization could refer also to cultural heritage inventories, lists and collections such as those established under the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003. There may, more broadly, be some opportunities for developing synergies between inventories established or being established for cultural heritage preservation purposes (such as States Parties are obliged to do under the UNESCO Convention referred to) and the kind of registers or notification systems suggested here. Indeed, measures could be developed to ensure that cultural heritage inventories, lists and collections could reinforce, support and facilitate the implementation of *sui generis* provisions for the protection of TCEs/EoF (and TK).[58] WIPO is working with relevant stakeholders in examining these questions further;

(vii) in order for the provision not to be too prescriptive however, further questions of implementation could be left to national and regional laws. Enabling legislation, regulations or administrative measures could provide guidance on issues such as: (a) the manner in which applications for notification or registration should be made; (b) to what extent and for what purposes applications are examined by the registration office; (c) measures to ensure that the registration or notification of TCEs/EoF is accessible and affordable; (d) public access to information concerning which TCEs/EoF have been registered or notified; (e) appeals against the registration or notification of TCEs/EoF; (f) the resolution by the registration office of

---

55 Intervention at seventh session of the Committee (WIPO/GRTKF/IC/7/15 Prov. Para. 89) and previously.

56 See comments by the European Community and its Member States on previous provision B.9.

57 See comments by the Saami Council.

58 See UNESCO Expert Meeting on Inventorying Intangible Cultural Heritage, March 17 and 18, 2005.

disputes relating to which community or communities should be entitled to benefit from the protection of a TCE/EoF, including competing claims from communities from more than one country; and, (g) the legal effect of notification or registration.

Recording, fixation and documentation of TCEs/EoF

The role of documentation, recording and fixation of TCEs/EoF and its relationship with IP protection has been discussed at length in previous documents and publications.[59] In brief, previous discussions have identified certain IP-related concerns with documentation initiatives. For example, copyright and related rights in the documentation, recordings and fixations would almost always vest not in the communities themselves but in those who undertake the documentation, recording or fixation. Second, documentation and recordal of TCEs/EoF, particularly if made available in digitized form, make the TCEs/EoF more accessible and available and may undermine the efforts of communities to protect them. For these reasons, the proposed article provides that any IP rights in recordings made specifically for registration purposes should vest in the relevant communities. Indeed, fixing in material form TCEs/EoF which would not otherwise be protectable, establishes new IP rights in the fixation and these IP rights could be used indirectly to protect the TCEs/EoF themselves (this strategy has been used for example to protect ancient rock art).[60] It is furthermore clear that the recording and documentation of TCEs/EoF is a valuable if not essential component of cultural heritage safeguarding programs. WIPO is undertaking further work on the IP aspects and implications of recording and documentation of TCEs/EoF in cooperation with other stakeholders. The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, 1993 urges indigenous peoples *inter alia* to "develop a code of ethics which external users must observe when recording (visual, audio, written) their traditional and customary knowledge".[61]

Changes made by Committee participants to this provision through their comments and inputs

The revised provision retains the basic "no formalities" approach, as many have argued for.[62] Some have, however, argued against such an approach, which requires further reflection.[63]

The previous provision B. 8 in WIPO/GRTKF/IC/7/3 also offered some form of registration or notification as an option. Based on interventions made at the seventh session of the Committee and on the written comments received, the revised provision suggests registration or notification as a requirement for the protection of TCEs/EoF of particular cultural or spiritual significance, for which strong PIC-based protection would be applicable.[64] Various other changes have been made taking into account comments from, amongst others, Colombia, the European Union and its Member States, the International Trademark Association (INTA), the Assembly of First Nations and the Saami Council.

---

59 See WIPO/GRTKF/IC/5/3, WIPO/GRTKF/IC/6/3 and WIPO/GRTKF/IC/7/3, for example.

60 See, for example, Janke, 'Unauthorized Reproduction of Rock Art' in Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions, WIPO, 2003.

61 Article 1.3.

62 See also comments of Colombia.

63 Comments of the United States of America.

64 Comments by the European Union and its Member States and the International Trademark Association (INTA).

Colombia in particular suggested specific wording taken from articles 52 and 53 of Andean Decision 351 on Copyright and Neighboring Rights. The wording suggested was: "The protection granted to TCEs/EoF and the works derived therefrom shall not be subject to any kind of formality. Consequently, the omission of recordal does not prevent the enjoyment or exercise of the rights recognized. Recordal is declaratory and does not constitute rights. Without prejudice thereto, entry into the register presumes that the facts and acts recorded therein are true, unless proven otherwise. Any entry does not affect the rights of third parties."[65]

[65] See comments of Colombia.

ARTICLE 8:

SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS

(a) Accessible, appropriate and adequate enforcement and dispute-resolution mechanisms, border-measures, sanctions and remedies, including criminal and civil remedies, should be available in cases of breach of the protection for traditional cultural expressions/expressions of folklore.

(b) The Agency referred to in Article 4 should be tasked with, among other things, advising and assisting communities with regard to the enforcement of rights and with instituting civil, criminal and administrative proceedings on their behalf when appropriate and requested by them.

[Commentary on Article 8 follows]

COMMENTARY

ARTICLE 8: SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS

Background

This provision concerns which civil and criminal sanctions and remedies may be made available for breaches of the rights provided.

Communities and others have pointed out that the remedies available under current law may not be appropriate to deter infringing use of the works of an indigenous copyright holder, or may not provide for damages equivalent to the degree of cultural and non-economic damage caused by the infringing use. References have also been made to the desirability of alternative dispute resolution (ADR) in this area.[66]

Member States have pointed out the necessity of appropriate guidance and practical experiences with sanctions, remedies and enforcement.[67]

Changes made by Committee participants to this provision through their comments and inputs

Certain changes were made to the previous provision B.9 in document WIPO/GRTKF/IC/7/3, in the light of comments received from amongst others the Islamic Republic of Iran, the European Union and its Member States and the United States of America.

[66] GRULAC (WIPO/GRTKF/IC/1/5, Annex I, p.9), Asian Group (WIPO/GRTKF/IC/2/10), African Group (WIPO/GRTKF/IC/3/15).

[67] See interventions by Kenya and Morocco (WIPO/GRTKF/IC/7/15 Prov. Paras. 80 and 85).

ARTICLE 9:

TRANSITIONAL MEASURES

(a) These provisions apply to all traditional cultural expressions/expressions of folklore which, at the moment of the provisions coming into force, fulfill the criteria set out in Article 1.

(b) Continuing acts in respect of traditional cultural expressions/expressions of folklore that had commenced prior to the coming into force of these provisions and which would not be permitted or which would be otherwise regulated by the provisions, should be brought into conformity with the provisions within a reasonable period of time after they enter into force, subject to respect for rights previously acquired by third parties.

[Commentary on Article 9 follows]

COMMENTARY

ARTICLE 9: TRANSITIONAL MEASURES

Background

This provision concerns whether protection should operate retroactively or prospectively, and in particular how to deal with utilizations of TCEs/EoF that are continuing when the provisions enter into force and which had lawfully commenced before then.

As many Committee participants have pointed out, this question touches directly upon the notion of the " public domain". Previous documents have pointed out that a "clearer understanding of the role, contours and boundaries of the public domain is vital in the development of an appropriate policy framework for the IP protection of TCEs."[68] Committee participants have stated that the public domain was not a concept recognized by indigenous peoples and/or that as expressions of folklore *stricto sensu* had never been protected under IP they could not be said to have entered a " public domain." In the words of the Tulalip Tribes: "It is for this reason that indigenous peoples have generally called for the protection of knowledge that the Western system has considered to be in the 'public domain,' as it is their position that this knowledge has been, is, and will be regulated by customary law. Its existence in the 'public domain' has not been caused by their failing to take the steps necessary to protect the knowledge in the Western IP system, but from a failure from governments and citizens to recognize and respect the customary law regulating its use."[69]

Several options are apparent in existing laws:

(i) retroactivity of the law, which means that all previous, ongoing and new utilizations of TCEs would become subject to authorization under the new law or regulation;

(ii) non-retroactivity, which means that only those new utilizations would come under the law or regulation that had not been commenced before their entry into force; and

(iii) an intermediate solution, in terms of which utilizations which become subject to authorization under the law or regulation but were commenced without authorization before the entry into force, should be brought to an end before the expiry of a certain period (if no relevant authorization is obtained by the user in the meantime, as required).

Existing *sui generis* systems and models either do not deal with the question, or provide only for prospective operation. However, the Pacific Regional Model, 2002 follows in general the intermediate solution described above.

This intermediate solution is the approach of the draft provision. It draws particularly from the Pacific Regional Model, 2002 as well as wording found in article 18 of the Berne Convention for the Protection of Literary and Artistic Works, 1971.

---

68 See for example WIPO/GRTKF/IC/5/3 and subsequent documents.

69 Statement at fifth session of the Committee, also available at http://www.wipo.int/tk/en/igc/ngo/ngopapers.html

Changes made by Committee participants to this provision through their comments and inputs

This provision was revised in the light of statements on the " public domain" made at previous sessions of the Committee, statements made at the seventh session by *inter alia* New Zealand and Mr. Maui Solomon[70], and comments received from amongst others the European Union and its Member States, the United States of America, *l'Organisation africaine de la propriete intellectuelle* (OAPI), the Islamic Republic of Iran, the International Trademark Association (INTA) and the Saami Council. Certain comments drew attention to the complexity of these matters and urged further reflection by the Committee.

[70] WIPO/GRTKF/IC/7/15 Prov. Para. 70.

ARTICLE 10:

RELATIONSHIP WITH INTELLECTUAL PROPERTY PROTECTION AND OTHER FORMS OF PROTECTION, PRESERVATION AND PROMOTION

Protection for traditional cultural expressions/expressions of folklore in accordance with these provisions does not replace and is complementary to protection applicable to traditional cultural expressions/expressions of folklore and derivatives thereof under other intellectual property laws, laws and programs for the safeguarding, preservation and promotion of cultural heritage, and other legal and non-legal measures available for the protection and preservation of traditional cultural expressions/expressions of folklore.

[Commentary on Article 10 follows]

COMMENTARY

ARTICLE 10: RELATIONSHIP WITH INTELLECTUAL PROPERTY PROTECTION AND OTHER FORMS OF PROTECTION, PRESERVATION AND PROMOTION

Background

Relationship with IP laws

These provisions are intended to provide forms of protection for TCEs/EoF not currently available under conventional and existing IP laws.

It has been previously discussed that any special protection for TCEs/EoF should be concurrent with the acquisition of IP protection that might also be available under IP laws. Earlier discussions had recalled that some, if not many, of the needs and concerns of indigenous peoples and traditional and other cultural communities and their members may be met by solutions existing already within current IP systems, including through appropriate extensions or adaptations of those systems. For example:

(a) copyright and industrial designs laws can protect contemporary adaptations and interpretations of pre-existing materials, even if made within a traditional context;
(b) copyright law may protect unpublished works of which the author is unknown;
(c) the *droit de suite* (the resale right) in copyright allows authors of works of art to benefit economically from successive sales of their works;
(d) performances of "expressions of folklore" may be protected under the WIPO Performances and Phonograms Treaty (WPPT), 1996;
(e) traditional signs, symbols and other marks can be registered as trademarks;
(f) traditional geographical names and appellations of origin can be registered as geographical indications; and,
(g) the distinctiveness and reputation associated with traditional goods and services can be protected against "passing off" under unfair competition laws and/or the use of certification and collective trade marks.

Relationship with non-IP measures

It has also been discussed widely that comprehensive protection may require a range of proprietary and non-proprietary, including non-IP, tools. Non-IP approaches that may be relevant and useful include trade practices and marketing laws; laws of privacy and rights of publicity; law of defamation; contracts and licenses; cultural heritage registers, inventories and databases; customary and indigenous laws and protocols; cultural heritage preservation and promotion laws and programs[71]; and handicrafts promotion and development programs. In particular, as some Committee participants have suggested, opportunities for synergies between the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003 and these provisions could be further explored.

[71] The comments of the former Yugoslav Republic of Macedonia provided information on, amongst other things, its cultural heritage laws and programs.

The suggested provisions are not intended to replace the need for such non-IP measures and programs. IP and non-IP approaches and measures are not mutually-exclusive options, and each may, working together, have a role to play in a comprehensive approach to protection.[72]

The provisions are intended to complement and work together with laws and measures for the preservation and safeguarding of intangible cultural heritage. In some cases, existing cultural heritage measures, institutions and programs could be made use of in support of these principles, thus avoiding a duplication of effort and resources. Which modalities and approaches are adopted will also depend upon the nature of the TCEs to be protected, and the policy objectives that protection aims to advance.

Changes made by Committee participants to this provision through their comments and inputs

The previous provision B.11 has been modified to take into account also non-legal and non-IP measures as suggested by several Committee participants. The revised provision now also follows more closely the corresponding provision in the Model Provisions, 1982. More generally, comments on this provision were received from, among others, the European Union and its Member States, the former Yugoslav Republic of Macedonia, the Russian Federation, the United States of America, the Saami Council and the International Trademark Association (INTA).

[72] See also comments of New Zealand on WIPO/GRTKF/IC/7/3.

ARTICLE 11:

INTERNATIONAL AND REGIONAL PROTECTION

The rights and benefits arising from the protection of traditional cultural expressions/expressions of folklore under national measures or laws that give effect to these international provisions should be available to all eligible beneficiaries who are nationals or habitual residents of a prescribed country as defined by international obligations or undertakings. Eligible foreign beneficiaries should enjoy the same rights and benefits as enjoyed by beneficiaries who are nationals of the country of protection, as well as the rights and benefits specifically granted by these international provisions.

[Commentary on Article 11 follows]

COMMENTARY

ARTICLE 11: INTERNATIONAL AND REGIONAL PROTECTION

Background

This provision deals with the technical question of how rights and interests of foreign holders of rights in TCEs/EoF would be recognized in national laws. In other words, on what conditions and in what circumstances foreign rights holders would have access to national protection systems, and what level of protection would be available to the benefit of foreign right holders. This question is more widely discussed in companion document WIPO/GRTKF/IC/8/6. For present purposes, and *simply as a starting point for discussion*, a provision based generally upon national treatment as is found in Article 5 of the Berne Convention is included as a basis for further consideration and analysis.

Broadly, but by no means exclusively, the question of how rights and interests of foreign holders of rights in TCEs/EoF would be recognized in national laws has been resolved in IP by reference to the principle of "national treatment", although this principle can be subject to some important exceptions and limitations. National treatment can be defined in terms of granting the same protection to foreign rightsholders as are granted to domestic nationals, or *at least* the same form of protection. For example:

(a) The Berne Convention (Article 5) provides that "(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention," and that "protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors";

(b) The Rome Convention, 1961, in so far as performers are concerned, provides as follows: "For the purposes of this Convention, national treatment shall mean the treatment accorded by the domestic law of the Contracting State in which protection is claimed: *(a)* to performers who are its nationals, as regards performances taking place, broadcast, or first fixed, on its territory; . . National treatment shall be subject to the protection specifically guaranteed, and the limitations specifically provided for, in this Convention" (Article 2); and,

(c) The WPPT, 1996 states as follows: "Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty, and to the right to equitable remuneration provided for in Article 15 of this Treaty."

Instead of national treatment, or supplementing it, other international legal mechanisms have been used to recognize the IP rights of foreign nationals. Under "reciprocity" (or reciprocal recognition), whether a country grants protection to nationals of a foreign country depends on whether that country in turn extends protection to nationals of the first country; the duration or nature of protection may also be determined by the same principle. Under a "mutual recognition" approach, a right recognized in one country would be recognized in a foreign country by virtue of an agreement between the two countries. Another related

mechanism for affording access to a national system is "assimilation" to an eligible nationality by virtue of residence. For example, the Berne Convention (Article 3(2)) provides that authors who are not nationals of one of the countries of the [Berne] Union but who have their habitual residence in one of them shall, for the purposes of the Convention, be assimilated to nationals of that country.

Also of potential application to the recognition of rights of foreign rights holders, is the "most-favoured-nation" principle. The TRIPS Agreement provides (subject to exceptions) that: "[w]ith regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a [WTO] Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members."

While a national treatment approach would, in the light of precedent and past experience in the IP field, appear to be an appropriate starting point, the very nature of TCEs/EoF and the *sui generis* forms of protection being called for by many Committee participants, suggests that national treatment be supplemented by certain exceptions and limitations or other principles such as mutual recognition, reciprocity and assimilation, especially when this concerns the legal status and customary laws of beneficiaries of protection. For example, Article 2 of the suggested provisions above state that the beneficiaries of protection would be the communities in whom "the custody, care and safeguarding of the TCEs/EoF are entrusted in accordance with the customary laws and practices of the communities." Under one strict conception of national treatment, a foreign court in the country of protection would have recourse to its own laws, including its own customary laws, to determine whether a foreign community qualifies as a beneficiary. This may not satisfactorily address the situation from the community's viewpoint which would, reasonably, wish for its own customary laws to be referred to. Under mutual recognition and assimilation principles, a foreign court in the country of protection could accept that a community from the country of origin of the TCE/EoF has legal standing to take action in country A as the beneficiary of protection because it has such legal standing in the country of origin. Thus, while national treatment might be appropriate as a general rule, it may be that mutual recognition, for example, would be the appropriate principle to address certain issues such as legal standing.

The protection of foreign holders of rights in TCEs/EoF is, however, a complex question as Committee participants have pointed out. The Delegation of Egypt, for example, stated at the seventh session: ". . . TCEs/EoF were often part of the shared cultural heritage of countries. Their regional and international protection was therefore a complex issue and it was necessary to be very careful. Countries would have to consult with each other before adopting any legal measures in this regard."[73] Morocco noted the need for "wider consultation involving all interested parties before the establishment of legal protection mechanisms."[74] In view of this complexity, Committee discussions have thus far provided little specific guidance on this technical question and existing TCE *sui generis* national laws either do not protect foreign rightsholders at all or show a mix of approaches.

For present purposes, therefore, a provision based generally upon national treatment as is found in Article 5 of the Berne Convention, is proposed for further consideration and analysis.

---

[73] WIPO/GRTKF/IC/7/15 Prov. Par. 69.
[74] WIPO/GRTKF/IC/7/15 Prov. Par. 85.

Further drafts of these provisions could, depending on the Committee's wishes, explore more deeply the kinds of technical provisions found in international instruments, such as provisions dealing with points of attachment, assimilation, protection in the country of origin and independent protection. They could also address further the question of "regional folklore" and the practical relationship between the international dimension and the suggested registration/notification of TCEs/EoF (see Articles 3(a) and 7 above). As stated in the commentary to those articles, they currently refer to national registers, but there could eventually be envisaged some form of regional and/or international registers, drawing from, for example, Article 6*ter* of the Paris Convention or the registration system provided for in Article 5 of the Lisbon Agreement for the International Registration of Appellations of Origin, 1958.

Changes made by Committee participants to this provision through their comments and inputs

As already noted, several interventions at the seventh session and comments observed that this is a complex issue requiring further careful consideration, as noted above. Few if any interventions or comments made specific proposals in regard to the technical question identified above.

[End of document]

LAMPIRAN 9

ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

PART I

GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1

Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[1] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[2] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2

Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[3] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the

[1] When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

[2] In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

[3] For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

Article 5

Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the

mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9

Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10

Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11

Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12

Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14

Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's

law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods

or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17

Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18

Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21

Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications

for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[4]

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with

[4] Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5: PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[5] Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

[5] For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

   (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[6] for these purposes that product;

   (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29

Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use[7] of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

[6] This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

[7] "Other use" refers to use other than that allowed under Article 30.

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.[8]

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

[8] It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:[9] importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38

[9] The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[10] so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

[10] For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits

of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42

Fair and Equitable Procedures

Members shall make available to right holders[11] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

[11] For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 44

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant’s right is being infringed or that such

infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[12]

Article 51

Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures[13] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[14] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into

[12] Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[13] It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[14] For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52

Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53

Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a

decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56

Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57

Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58

Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60

De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the

right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

Article 63

Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68

Council for Trade-Related Aspects of Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69

International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact

points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70

Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71

Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Agreement Between the World Intellectual Property Organization and the World Trade Organization[*] (of December 22, 1995)

TABLE OF CONTENTS

Preamble

The World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO),

Desiring to establish a mutually supportive relationship between them, and with a view to establishing appropriate arrangements for cooperation between them,

Agree as follows:

Article 1
Abbreviated Expressions

For the purposes of this Agreement:

(i) "WIPO" means the World Intellectual Property Organization;

(ii) "WTO" means the World Trade Organization;

(iii) "International Bureau" means the International Bureau of WIPO;

(iv) "WTO Member" means a party to the Agreement Establishing the World Trade Organization;

(v) "the TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Trade Organization;

(vi) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised;

(vii) "Paris Convention (1967)" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967;

(viii) "emblem" means, in the case of a WTO Member, any armorial bearing, flag and other State emblem of that WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and, in the case of an international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

[*] Official English title. Entry into force: January 1, 1996. Source: Communication from the International Bureau of WIPO and the WTO Secretariat.

Article 2
Laws and Regulations

(1) [*Accessibility of Laws and Regulations in the WIPO Collection by WTO Members and Their Nationals*] The International Bureau shall, on request, furnish to WTO Members and to nationals of WTO Members copies of laws and regulations, and copies of translations thereof, that exist in its collection, on the same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively.

(2) [*Accessibility of the Computerized Database*] WTO Members and nationals of WTO Members shall have access, on the same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively, to any computerized database of the International Bureau containing laws and regulations. The WTO Secretariat shall have access, free of any charge by WIPO, to any such database.

(3) [*Accessibility of Laws and Regulations in the WIPO Collection by the WTO Secretariat and the Council for TRIPS*]

(a) Where, on the date of its initial notification of a law or regulation under Article 63.2 of the TRIPS Agreement, a WTO Member has already communicated that law or regulation, or a translation thereof, to the International Bureau and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in the collection of the International Bureau, the International Bureau shall, on request of the WTO Secretariat, give, free of charge, a copy of the said law, regulation or translation to the WTO Secretariat.

(b) Furthermore, if, for the purposes of carrying out its obligations under Article 68 of the TRIPS Agreement, such as monitoring the operation of the TRIPS Agreement or providing assistance in the context of dispute settlement procedures, the Council for TRIPS of the WTO requires a copy of a law or regulation, or a copy of a translation thereof, which had not previously been given to the WTO Secretariat under subparagraph (a), and which exists in the collection of the International Bureau, the International Bureau shall, upon request of either the Council for TRIPS or the WTO Secretariat, give to the WTO Secretariat, free of charge, the requested copy.

(c) The International Bureau shall, on request, furnish to the WTO Secretariat on the same terms as apply to Member States of WIPO any additional copies of the laws, regulations and translations given under subparagraph (a) or (b), as well as copies of any other laws and regulations, and copies of translations thereof, which exist in the collection of the International Bureau.

(d) The International Bureau shall not put any restriction on the use that the WTO Secretariat may make of the copies of laws, regulations and translations transmitted under subparagraph (a), (b) or (c).

(4) [*Laws and Regulations Received by the WTO Secretariat from WTO Members*]

(a) The WTO Secretariat shall transmit to the International Bureau, free of charge, a copy of the laws and regulations received by the WTO Secretariat from WTO Members under Article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and the International Bureau shall place such copies in its collection.

(b) The WTO Secretariat shall not put any restriction on the further use that the International Bureau may make of the copies of the laws and regulations transmitted under subparagraph (a).

(5) [*Translation of Laws and Regulations*] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same assistance for translation of laws and regulations for the purposes of Article 63.2 of the TRIPS Agreement as it makes available to Members of WIPO which are developing countries.

Article 3
Implementation of Article 6ter of the Paris Convention for the Purposes of the TRIPS Agreement

(1) [*General*]

(a) The procedures relating to communication of emblems and transmittal of objections under the TRIPS Agreement shall be administered by the International Bureau in accordance with the procedures applicable under Article 6ter of the Paris Convention (1967).

(b) The International Bureau shall not recommunicate to a State party to the Paris Convention which is a WTO Member an emblem which had already been communicated to it by the International Bureau under Article 6ter of the Paris Convention prior to January 1, 1996, or, where that State became a WTO Member after January 1, 1996, prior to the date on which it became a WTO Member, and the International Bureau shall

not transmit any objection received from the said WTO Member concerning the said emblem if the objection is received by the International Bureau more than 12 months after receipt of the communication of the said emblem under Article 6ter of the Paris Convention by the said State.

(2) [*Objections*] Notwithstanding paragraph (1)(a), any objection received by the International Bureau from a WTO Member which concerns an emblem that had been communicated to the International Bureau by another WTO Member where at least one of the said WTO Members is not party to the Paris Convention, and any objection which concerns an emblem of an international intergovernmental organization and which is received by the International Bureau from a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect emblems of international intergovernmental organizations, shall be transmitted by the International Bureau to the WTO Member or international intergovernmental organization concerned regardless of the date on which the objection had been received by the International Bureau. The provisions of the preceding sentence shall not affect the time limit of 12 months for the lodging of an objection.

(3) [*Information to Be Provided to the WTO Secretariat*] The International Bureau shall provide to the WTO Secretariat information relating to any emblem communicated by a WTO Member to the International Bureau or communicated by the International Bureau to a WTO Member.

Article 4
Legal-Technical Assistance and Technical Cooperation

(1) [*Availability of Legal-Technical Assistance and Technical Cooperation*] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to Member States of WIPO which are developing countries. The WTO Secretariat shall make available to Member States of WIPO which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement as it makes available to developing country WTO Members.

(2) [*Cooperation Between the International Bureau and the WTO Secretariat*] The International Bureau and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximize the usefulness of those activities and ensure their mutually supportive nature.

(3) [*Exchange of Information*] For the purposes of paragraphs (1) and (2), the International Bureau and the WTO Secretariat shall keep in regular contact and exchange non-confidential information.

Article 5
Final Clauses

(1) [*Entry into Force of this Agreement*] This Agreement shall enter into force on January 1, 1996.

(2) [*Amendment of this Agreement*] This Agreement may be amended by common agreement of the parties to this Agreement.

(3) [*Termination of this Agreement*] If one of the parties to this Agreement gives the other party written notice to terminate this Agreement, this Agreement shall terminate one year after receipt of the notice by the other party, unless a longer period is specified in the notice or unless both parties agree on a longer or a shorter period.

– · –

Done in Geneva on December 22, 1995.

For the World Intellectual Property Organization

A. Bogsch
Director General

For the World Trade Organization

R. Ruggiero
Director-General

LAMPIRAN 9

ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

PART I

GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1

Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[1] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[2] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2

Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[3] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the

[1] When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

[2] In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

[3] For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

Article 5

Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the

mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9

Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10

Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11

Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12

Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14

Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's

law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods

or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17

Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18

Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21

Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications

for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[4]

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with

[4] Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5: PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[5] Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

[5] For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[6] for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29

Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use[7] of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

[6] This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

[7] "Other use" refers to use other than that allowed under Article 30.

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.[8]

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

[8] It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:[9] importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38

[9] The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[10] so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

[10] For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits

of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42

Fair and Equitable Procedures

Members shall make available to right holders[11] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

[11] For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 44

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such

infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[12]

Article 51

Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures[13] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[14] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into

[12] Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[13] It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[14] For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52

Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53

Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a

decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56

Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57

Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58

Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60

De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the

right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

Article 63

Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68

Council for Trade-Related Aspects of Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69

International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact

points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70

Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71

Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

001700003

MINISTRY OF CULTURE AND TOURISM
REPUBLIC OF INDONESIA

COMMITMENT OF THE DEPARTMENT OF CULTURE AND TOURISM REGARDING "SAFEGUARDING OF THE CULTURE OF INDONESIAN BATIK"

The Minister of Culture and Tourism of the Republic of Indonesia herein states highest commitment to efforts for safeguarding the culture of Indonesian Batik as one of the elements of Intangible Cultural Heritage.

The Department of Culture and Tourism also herein declares that data regarding Indonesian Batik has been recorded in the inventory of Intangible Cultural Heritage maintained within the territory of the Republic of Indonesia.

Jakarta, August 19, 2008

Minister of Culture and Tourism,

Ir. Jero Wacik, S.E.

COORDINATING MINISTRY FOR PEOPLE'S WELFARE
REPUBLIC OF INDONESIA

COMMITMENT OF THE COORDINATING MINISTRY FOR PEOPLE'S WELFARE REGARDING "SAFEGUARDING OF THE CULTURE OF INDONESIAN BATIK"

For the purpose of guaranteeing the continuation of safeguarding and development of Indonesian Batik both now and in the future, the Coordinating Ministry for People's Welfare of the Republic of Indonesia has and will continue to carry out efforts for the conservation of Indonesian Batik. This is In accord with the basic duties of the Coordinating Ministry for People's Welfare as the Chair of the Working Group on World Heritage, wherein Indonesian Batik is one of the elements which we are nominating as intangible cultural heritage of the world.

The efforts which we will carry out are as follows:

1. To coordinate, facilitate and motivate stakeholders in safeguarding Indonesian Batik as Intangible Cultural Heritage.
2. To provide opportunities to all members of the batik community in Indonesia to carry out activities for safeguarding Indonesian batik.
3. To give appreciation to members of the Indonesia batik community who continously carry out safeguarding, development and utilization of batik.
4. To assist in activities to promote Indonesian Batik.
5. To push for the establishment of regulations for conservation and safeguarding of Indonesian batik.
6. To push the appropriate agencies to provide subsidies to Batik Cooperatives existing in Indonesia.

Jakarta, 19th August 2008
Secretary of the Coordinating Ministry
for People's Welfare

Indroyono Soesilo

DEPARTMENT OF CULTURE AND TOURISM
DIRECTORATE GENERAL FOR CULTURAL VALUES, ARTS & FILM
JL. MEDAN MERDEKA BARAT NO. 17 TEL. (021) FAX. (021)
JAKARTA 10110 3838000, 3810123 (HUNTING) 38384824, 3840210

COMMITMENT OF THE DIRECTORATE GENERAL FOR CULTURAL VALUES, ARTS AND FILM DEPARTMENT OF CULTURE AND TOURISM REGARDING "SAFEGUARDING OF THE CULTURE OF INDONESIAN BATIK"

The Directorate General for Cultural Values, Arts and Film, Department of Culture and Tourism of the Republic of Indonesia herein declares its commitment to efforts on preserving the culture of Indonesian Batik by programming and executing various efforts and steps which could guarantee the safeguarding of Indonesian Batik as one of the elements of Intangible Cultural Heritage .

This commitment will be implemented in the form of various policies and execution of programs for conservation of the culture of Indonesian Batik as follows:

1. To prepare a Regulation of the Minister of Culture and Tourism regarding Cultural Elements protected by the Government of the Republic of Indonesia, including the cultural element of Indonesian Batik;

2. To push the execution of a feasibility study on Intangible Cultural Heritage as Protected Cultural Elements through various activities such as workshops, research, inventorization, etc.;

3. To socialize, promote and endeavour to build the capacity of the people for Safeguarding of the Intangible Cultural Heritage;

4. To establish and develop the Culture Map of Indonesia as one of the inventories of Intangible Cultural Heritage found in the territory of the Republic of Indonesia.

Jakarta, August 15, 2008

Director General
for Cultural Values, Arts and Film,

Drs. Tjetjep Suparman, M.Si.

DECLARATION OF THE ESTABLISHMENT OF THE INDONESIAN BATIK COMMUNITY FORUM

Considering:

1. That the cultural diversity of Indonesia is the wealth of our nation signifying high and noble values and the civilization of the Indonesian people, which must be maintained and developed as the heritage of our nation.
2. That the culture of batik which has taken root in the territory of Indonesia is a special characteristic of the Indonesian nation which simultaneously promotes cultural diversity and culture-based industry as well as human creative and innovative energy.
3. Communities, groups, government institutions and individuals involved in the culture of batik have stated that batik is a vehicle for cultural dialogue and exchange of ideas and a heritage which may be further developed by future generations and at the same time support the prosperity of the people.

Mindful of:

1. The 1945 Constitution, Article 28c, Paragraph 1, as amended, which states, "Every person has the right to develop his or herself through their basic needs, has the right to education and to obtain the benefit of science, technology, arts and culture for increasing the quality of their life and for the prosperity of the nation."
2. The 2003 UNESCO Convention on Safeguarding of the Intangible Cultural Heritage, which has been ratified by the Indonesian Government by Regulation of the President of the Republic of Indonesia No. 78 of 2007, specifically Article 13 Paragraph (b) which states among other things the obligation to designate or appoint one or more competent institutions to safeguard the intangible cultural heritage present on its territory, and Article 15 which among other things states the obligation to involve communities, groups and individuals in efforts to safeguard the intangible cultural heritage, as affirmed in the Nomination Form Section 5, sub a, b and c: Criteria R.4 Article 19 of the Operational Directives of the Intangible Cultural Heritage Convention.
3. The nomination file of Indonesian Batik to UNESCO for inscription on the *Representative List of the Intangible Cultural Heritage of Humanity*. Section 4.c and 5.a. sub. g. (Establishment of the Indonesian Batik Community Forum).

Taking note of:

The agreement to form an Indonesian Batik Community Forum signed at the 4th Seminar called to discuss the Nomination File of Indonesian Batik to UNESCO on 4th August 2008 in Jakarta.

HEREBY DECLARE

Firstly, the establishment of a forum as a vehicle for communication and collaboration among the various government institutions, non-governmental organizations, foundations, paguyuban associations groups and private individuals as the stakeholders involved in the culture of Indonesian batik. This forum shall be known as the **Indonesian Batik Community Forum,** henceforth referred to as Masbatik. The Masbatik Forum is a non-governmental non-profit independent organization.

Secondly, that the Masbatik Forum is not intended to replace the role and function of existing organizations or individuals among the batik community. The Masbatik Forum has the following aims and objectives:

- To represent the mutual desires and aspirations of government institutions, non-governmental organizations, foundations, paguyuban associations, groups and individuals involved in and committed to batik culture in Indonesia to join together and collaborate, through joint efforts to advance the safeguarding and development of batik culture as the cultural heritage of our nation..
- As an organization for mutual discussion and formulation of policy and action for safeguarding of batik culture on a national scale and also for international collaboration, which would then be carried out by the various elements and stakeholders who have joined together in Forum Masbatik.

Thirdly, in order to achieve the aims and objectives of Masbatik Forum, various activities will be carried out, among them:

1. To safeguard and develop batik culture all over Indonesia as our nation's cultural heritage.
2. To safeguard and facilitate the activities of all the institutions, foundations, groups and individual batik lovers which have joined together in the Masbatik Forum.
3. To hold periodic meetings to coordinate efforts for safeguarding and development of batik culture by all elements and stakeholders which have joined together in the Masbatik Forum.
4. To endeavour to synergize the vision and mission of the various elements and stakeholders of Indonesian batik, while continuing to respect the principle of unity in diversity

Fourthly, The Masbatik Forum does not have an organizational structure, with the exception of a Secretariat, which will be temporarily located at the office of KADIN Indonesia Foundation, and headed by a Secretary to be appointed for a term of 2 years. The post of Secretary will temporarily be filled by the Secretary of KADIN Indonesian Foundation until a Secretary is appointed

definitively by Masbatik Forum. The Secrretary will have the task as a facilitator and communicator among all the elements and stakeholders.

Fiifthly, Membership of the Masbatik Forum is open and participative. Membership of the Masbatik Forum can be in the form of institutional membership represented by designated representatives and also individual membership. Every related government institution, foundation, paguyuban association, group and other individual involved in batik culture in Indonesia and who agrees with the aims and objectives of Masbatik Forum may join Masbatik Forum by making an application to the Secretary of Masbatik Forum.

Sixthly, matters with regard to Masbatik Forum which have not, or have not sufficiently been regulated in this Declaration will be regulated later in decisions amongst the elements and stakeholders who have joined together in Masbatik Forum.

Declared in Jakarta, on the Twenty Second of August, Two Thousand and Eight.

Signed by one hundred members of the Batik community and stakeholders, comprising government officials, representatives of non-governmental organizations, foundations, etc, and private individuals and experts.

Witnessed by the Coordinating Minister for Peoples' Welfare, the Minister for Culture and Tourism and five other Government Ministers.

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address*	No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1.	SRI SULTAN HAMENGKU BUWONO X	KRATON YOGYAKARTA	+62274 374 500	PEMILIK MUSEUM BATIK	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	NY. HJ. SOEBARDINAH. S	JL. BABARSARI I/3 YOGYA (485206)	KOLEKTOR BATIK	
2	M. HENALDY	—— " —— (485388)	PECINTA BATIK	
3	Bertha	Jl. Bintaran Kidul LO 374724	Pecinta Batik	
4.	GBPH. H. PRABUKUSUMO. S. Psi.	KRATON YOGYAKARTA 0274 376863	KEPALA MUSEUM BATIK KRATON YOGYAKARTA.	
5	HERRI SULISTIO	NGADIWINATAN NG I/1062 YOGYAKARTA	PECINTA BATIK	
6.	Larasati Suliantoro Sulaiman	Pakuningratan 38 Yogya	Ketua Paguyuban Pecinta Batik Indonesia Sekar Jagad	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut /
That we have been involved in/ requested our input for the drafting of this nomination file.
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address*	No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	Bambang Sugoro	Gemawang, Kec Jambu Kab. Semarang	081705945 10	Produksi batik	
2	Mahmudi	Gemawang Kec. jambu Kab. Smg	085729190342	"	
3	Setyo Indroprahasto	Institut Pertanian INTAN Yogyakarta	0812 27 68637	Pemerhati Batik dan Pecinta Alam	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut /
That we have been involved in/ requested our input for the drafting of this nomination file.
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1.	B.M. SUSANTI MS	POELUNG BARU E 21A YOGYAKARTA	PAGUYUBAN SEKAR JAGAD	
2	HERRI SULISTIO	NGADINGINATAN NGT/1062 Yogyakarta		

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	MARGARET SEKARLAYANTI	JL. KANFER RAYA R 9-11		
		BANYUMANIK, SEMARANG 081127025	PELESTARIAN	
2.	ATY WARSONUGROHO	SENDOWO C48 JOGJA	PECINTA, KOLEKTOR	
3.	IDA SETIAWATI	JL. IKEMITBUMEN 20 YOGYA		
		081328720761	Pecinta	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	Nita Azhar	Jl. Pandega Marta VI/1 YK / 081 1259554	membuat disain batik	Nita Azhar.
2	Murdijati G	Jl Kumelir kidul Bayangkara	Sekretaris [illegible]	[illegible]
3.	Laretna T. Adishakti	Griya Perwita Asri I A-11, 081 1269571	Advokasi & pendampingan melalui Indonesia Heritage Trust & Jogja Heritage Society	[illegible]

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1.	EVI JULIATI R.	BALAI BESAR KERAJINAN DAN BATIK 546 111 & 512456, Hp 08128 3590	PENELITIAN DAN PENGEM. BANGAN BATIK.	
2	ENDANG. PRISTI.	—11— Hp : 08156870959	—11—	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut /
That we have been involved in/ requested our input for the drafting of this nomination file.
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1.	DJANDJANG PS.	SURYOWIJAYAN MJ I/340 YOGYA	Pengajar Batik	
2.	MURDOKUSUMO, GB	KEMITBUMEN Kraton YOGYA	Pengurus Batik	
	RAY..		Kraton	
3.	PURUBOYO, BRAy	Kraton Yogya	Pengurus Batik Kraton	Purubaya
4.	TRIMARTINI	Kraton Yogya	— " —	/m
5.	HANI WINOTOSASTRA	JL. TIRTODIPURAN 54 YOGYAKARTA	Pengelola/Pengusaha	
		TEL.: 0274-375218	Batik Winotosastro	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address*	No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
	Taloyrawaty	kradenan 2/48	0285-427622.	pedagang batik -	[signature]
	Liem Poo Hien (Batik Liem Ping Wie)	Jl Raya 192	0285-785298	Pengrajin Batik	[signature]
	Elawati . AR (Zend Batik)	Kauman 66 I No.13 pekalongan	(0285) 432584	Pengrajin Batik	[signature]
	F.Rachman Noor	Toba 37	(0285-435032)	Pengusaha Batik	[signature]
	Fatchiyah A.Kadir	Semarang -46		Pengusaha Batik	[signature]

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	Hbu Almafachir	Jl. Bahagia No. 15 Pekl 081226770226	Pengrajin Batik.	
2	Muhajirl	JC. Perintis Kemerdekaan 30. 081569585425	Pelukis Batik	
3	Umar Ahmad	Jl. H.A. Salim 18, Pekly 081666192	Kadin Kota Pekalongan	
4	H. KIRMAN	ITAUMAN 081666837/0	PRODUSEN BATIK	
5	EDI HARSOYO	Jl. MUSAMMIT - PKL (0285) 425174	MINAT PEMANDANGAN	
6	M. AL-WI	KAUMAN 8/12 411780	PKBK	
7.	1220 N -	Podosugih Gg. I No 11		
8.	LARASATI	Jl. DR. SUTOMO. Gg I. PKL/085480489	Grosir Mm	
9.	Sugiharto	Jl. WR. Supratman 7-40 38.	Gg. Grosir Mm. Kabag TU. Diperindagkop Kab. Pekalongan.	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1.	TARH SUMARTO	DEKRATAS KAB. BANTUL (0274) 367333	PENGRAJIN	2-8-08
2	Yuli achun-	Batik Kudus	Pengrajin	
3	Nana Soewandi.	Batik Raden Wijaya.	pengrajin	2/8-08.

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1.	IWAN TIRTA	JL. PANARUKAN 25 JAKARTA.	OWNER OF BATIK	
		INDONESIA.	STUDIO.	
		TEL: (021/314-3122.	BATIK COLLETOR,	Iwan Tirta
2.	IZAH DASUKI	jl. K. LIBA	BATIK DESIGNER	
		jl. KALIBATA UTARA 2/60.	BATIK NUSANTARA HERITAGE	
3	MIRANTI D. PURBA	JL. SILIWANGI 105. CIREBON, JABAR	PEMBINA BATIK DI TRUSMI, CIREBON	
			KETUA: NUSANTARA HERITAGE	
4	Umar Ahmad	Jl. H.A. Salim 18, Pekalongan	Batik collector, owner batik workshop "TIDAL BATIK"	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	SUKATON Ms.	JL. SAMBIROTO III/106 KPAD CIBUBUR, JAK TIM 13720 (021) 873-1289; 0812 958 1258	PABUYUBAN PENCINTA BATIK	
2	Budiharja	Jl Imam Bonjol 1 Jakarta Hp 081 227 35567	Pecinta dan Pemakai Batik	
3	Poppy Savitri	Gedung E, DEPDIKNAS, SUDIRMAN-JAKPUS 0818 929 103 / poppysavitri@yahoo.co.id	Pecinta Batik & KASUBDIT KEARIFAN LOKAL & FOLKLOR DIT-TRADISI, DITJEN NBSF - BUDPAR.	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	JOETTI T. SOER-JANTO	MUSEUM BATIK DANAR HADI JL. BRIGJEN SLAMET RIYADI 261 SURAKARTA	KURATOR MUSEUM BATIK DANAR HADI	4-8-2008
2	ASTI SURYO A	IDEM (0271) 714326 Hp 081-125-6283	ASISTEN MANAJER MUSEUM BATIK DANAR HADI	4-8-2008

Yayasan Batik Indonesia

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	Yultin G. Kartasasmita	Jl. Widia Chandra V/26	Ketua Yayasan Batik Indonesia	[signature]
2	Willy ... Ram	Ajot Permata Senayan		[signature]
3	AFIF SYAKUR	Jl. Pandega Marta 37 A Yogya Telp 589914 / 08122690100	—	[signature]
4	ROOSEDIANA RENNY PRINGATI	JL. PENDIDIKAN NO: 1C, CILANDAK BARAT JAK-SELATAN	PENGURUS ~~ANGGOTA~~ YAYASAN BATIK IND, KOLEKTOR.	RRenny
5	Diana Santosa	Merawan Raya 69-70 Jakarta	Managing Director PT Batik Danar Hadi	a.n. [signature]

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	MARSAM KARDI	JCN. TANJUNG GG. TARUS I YOGYAKARTA (0274) 372169	PENGINTA / PEMERHATI BATIK	
2	YANI IRIAWADI	Jl. Hiu II no. 16 PJMI - Binaro (021) 735-2526. / 0818-12-5588.	Pencinta Batik.	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address*	No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
	RENASH MAHARINNY	Jl. Subang no. 2	021 - 3909968	Kolektor & Pecinta	
		Menteng	0811-824980	Batik.	
		Jakarta Pusat			04/08-08

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address*	No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1.	M. BANYIR. A.S	JL. H. ALUS SUCI NO 67	08166693 21.	- KETUA. LEMBAGA MUSEUM BATIK. - WAKIL KETUA PENGURUS	
2.	Komaruddin Kudiya	Jl. Sumbawa 22 Bandung	0811-237590	Pengrajin batik & pengajar	
3	Nawanzi Hry	Dirjen IKM	0813 80 185 252	Dokumentasi + Pelatihan	
4	EVA Laida	Dep. Perindustrian	0817797980	Penggemar batik.	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1.	Iman Sucipto Umar	Yayasan Kadin Indonesia 0811826[illegible]	Pendiri Lembaga Museum Batik	[signature]
2	DODI WAHYUDI	YPTT 08131081319	PENGGEMAR BATIK	[signature]

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address*	No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	THOMAS. DARMAWAN	MUHASYIM 10/39 CILANDAK.	081690431Y	Promote. Kompetisi Batik	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
	JUDI KNIGHT-ACHJADI	(62-21) 720-4386	Penilitian/Research	
		KOMP. DEPLU CIDODOL 27	& Dokumentasi/	
		KEL. GROGOL SEL.	Documentation of	
		JAKARTA 12220	batik	
	GAURA MANCACARITADIPURA	JL. RAWAMANGUN MUKA KT/K JAKARTA	PENASIHAT MUSEUM	
		021 4754646	BATIK DEICALONGAN	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
	MASYUD THOYIB	Taman Mini "Indonesia Indah" 081782075O. 021847 3985	Pemrakarsa Rekor Batik Terpanjang pertama di dunia tema Gondo Wayang tercatat di Museum Rekor Indonesia —	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut /
That we have been involved in/ requested our input for the drafting of this nomination file.
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
1	Hadjir Digdodar-	Taman KT I/314		
	Modjo Dts	Yogyakarta. (0274) 377835	Mendirikan Batic	
			course sejak 1970	
2.	TULUS WICHAKSONO	YAYASAN LOSARI		
		JL. A.M. SANGAJI . NO. 72.	mendirikan komunitas	
			Pembatik di Desa	
			Gemawe - Jateng.	

Pernyataan Persetujuan Komunitas Batik Indonesia atas Berkas Nominasi Batik Indonesia kepada UNESCO
Statement of Agreement of Indonesian Batik Community with Nomination File of Indonesian Batik to UNESCO

Kami, masyarakat Batik Indonesia yang bertanda tangan di bawah ini, setelah membaca/mendengarkan presentasi tentang isi berkas Nominasi Batik Indonesia kepada UNESCO untuk Inskripsi pada Daftar Representatif Budaya Takbenda Warisan Manusia, dan memberikan masukan kami, dengan ini menyatakan: / *We, the undersigned members of the community of Indonesian Batik, after reading/hearing a presentation of the nomination file of Indonesian Batik to UNESCO for Inscription on the Representative List of the Intangible Cultural Heritage of Humanity, and giving our input, hereby state:*

1. Bahwa kami telah dilibatkan/dimintai masukan dari kami, dalam perancangan berkas tersebut / *That we have been involved in/ requested our input for the drafting of this nomination file.*
2. Bahwa kami memahami isi berkas, dan setelah dilakukan koreksian seperlunya, kami secara bebas menyetujui dan percaya bahwa isi berkas merupakan gambaran yang benar tentang budaya takbenda Batik Indonesia, dan setuju kalau berkas nominasi diajukan kepada UNESCO untuk inskripsi tersebut di atas. *That we understand the contents of the file, and after necessary corrections have been made, we freely agree with and believe that it represents a true picture of the intangible culture of Indonesian Batik, and agree that the file be proposed to UNESCO for the abovementioned inscription.*

No.	Nama/ *Name*	Alamat/ *Address* No. Telpon/HP	Kegiatan Mengenai Batik *Activity Related to Batik*	Tandatangan/tgl. *Signature/date*
	ZAHIR WIDADI	NOYONTAAN 20 RT 01/RW 06 PKL	PENGELOLA MUSEUM BATIK	
	Emi G	Binangaiya BTN/200 Pekalongan 08122704280	Sda	
	mm. Soemosui	jl kopti 686 Bina Grigin Pekalongan 08157326 5818	Museum Batik	

TAMAN MINI "INDONESIA INDAH"
Badan Pelaksana Pengelolaan dan Pengembangan (BP3) TMII
Jl. Raya Taman Mini - Jakarta 13560

MEMO

Kepada yth.
Para Pimp. Anjungan TMII

Sehubungan dengan upaya memperjuangkan batik Indonesia menjadi Warisan Budaya dunia ; maka agar dibantu Mr. Gauka u. memperoleh keterangan yang diperlukan.

Atas bantuan dan kerjasamanya di-ucapkan terima kasih

Mengetahui

Karada
9/8.

Drs. Sigit Gunardjo S.

Angket Budaya Batik di Daerah

Berkas Nominasi Batik Indonesia untuk diinskripsikan UNESCO pada Daftar Representatif Budaya Takbenda Warisan Manusia

Anjungan Provinsi	Apakah Batik bagian pakaian adat di daerah Bapak/Ibu?	Apakah ada motif/ragam hias batik khas daerah Bapak/Ibu?	Apakah Bapak/Ibu tahu ada produksi batik di daerah Bapak/ Ibu?	Setuju kalau Batik Indonesia dicalon-kan sebagai warisan budaya takbenda	Nama Jelas	Tanda Tangan
Nanggroe Aceh Darussalam	YA (HAMPIR SEBAGIAN)	YA	YA (DARI MURAH/ PALING MAHAL)	YA	Cut Putri Alyanur	
Riau	YA	YA (PUCUK REBUNG)	YA	YA	DINNY. A.	
Sumatera Barat (W.Sumatra)	YA	YA. BATIK TANAH LIAT	YA	YA	Zusman	
Jambi	YA. SEBAGAI PELENGKAP	YA	YA (INDUSTRI RUMAH TANGGA)	YA	M. NASIR	
Bengkulu	YA (BATIK BESURETIC)	YA (KALIGRAFI)	ADA	YA	ISAM	
Sumatera Selatan (S.Sumatra)	YA (PACAIAN RESMI)	YA (TUMBUH2 AN)	YA	YA	Adi Shurairah	
Lampung	YA (BATIK SEBAGAI)	YA (LEMBAGA CINO)	BELUM	YA	HERYANTO	
Banten	YA	YA	YA	YA	DEDE SURYANI	
DKI Jakarta	YA	YA	YA (KECIL2AN)	YA	Sisca Pratiwi W	
Jawa Barat (West Java)	YA	YA	YA	YA	WINDI. RUSDIANA	
Jawa Tengah (Central Java)	YA	YA	YA	YA	Dwi Pudji. L	

Anjungan Provinsi	Apakah Batik bagian pakaian adat di daerah Bapak/Ibu?	Apakah ada motif/ragam hias batik khas daerah Bapak/Ibu?	Apakah Bapak/Ibu tahu ada produksi batik di daerah Bapak/ Ibu?	Setuju kalau Batik Indonesia dicalon-kan sebagai warisan budaya takbenda	Nama Jelas	Tanda Tangan
DIY Yogyakarta	YA	YA	YA	YA	DEDY P.	
Jawa Timur (East Java)	YA	YA	YA	YA	Paimin	
Bali	YA	YA	YA	YA	I WAYAN SUARDA	
Sulawesi Selatan (South Sulawesi)	BELUM	YA	MERINTIS	YA	MUSLIM M	
Sulawesi Tenggara (SE. Sulawesi)	YA	YA	BELUM (ADA TENUN)	YA		MARQUETTE
KalimantanSelatan (South Kalimantan)	YA	YA SASIRANGAN	ADA (DEKRANAS)	YA	FAHRANOOR.R	
Kalimantan Barat (West Kalimantan)	TIDAK	YA	YA (DEKRANAS DA	YA	Nurhakimah	
Kalimantan Tengah Central Kalimantan	TIDAK	MOTIF POHON BATANG GARING	TIDAK ADA	YA	JOHNHERLY	
Kalimantan Timur (East Kalimantan)	YA (KHUSUS ILAATON)	YA (SELURUH AMBIL MOTIF PEDAH	ADA (INDUSTRI KLT. DI PERTENUN	YA	USDEK.	
Maluku ~~Utara~~ (~~NT~~ Maluku)	YA (UMUM accomplished)	~~BELUM~~ ADA	BELUM	YA	Bu Dja	
Papua	BELUM YASB. DAWAN PESO	YA ASMAT BIAK SENTANI	ADA	YA	Marcel Siante	
Irian Jaya Barat						

Anjungan Provinsi	Apakah Batik bagian pakaian adat di daerah Bapak/Ibu?	Apakah ada motif/ragam hias batik khas daerah Bapak/Ibu?	Apakah Bapak/Ibu tahu ada produksi batik di daerah Bapak/ Ibu?	Setuju kalau Batik Indonesia dicalonkan sebagai warisan budaya takbenda	Nama Jelas	Tanda Tangan
SUMATERA UTARA (N. SUMATRA)	IKAT KEPALA	TIDAK (KHAS-ULOS)	BELUM ADA	YA	NGATEMAN	[signature]

Interviews conducted at Taman Mini Indonesia Indah TMII (Beautiful Indonesia in Miniature) 9-10 th August 2008
Interviewer: Gaura Mancacaritadipura
see table 1.0

Wawancara dilakukan di Taman Mini Indonesia Indah pada tgl 9-10 Agustus 2008
Yang melakukan wawancara:
Gaura Mancacaritadipura
<GAURA MANCACARITA DIPURA>

PRESIDEN
REPUBLIK INDONESIA

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 19 TAHUN 2002

TENTANG
HAK CIPTA

DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA

Menimbang: a. bahwa Indonesia adalah negara yang memiliki keanekaragaman etnik/suku bangsa dan budaya serta kekayaan di bidang seni dan sastra dengan pengembangan-pengembangannya yang memerlukan perlindungan Hak Cipta terhadap kekayaan intelektual yang lahir dari keanekaragaman tersebut;

b. bahwa Indonesia telah menjadi anggota berbagai konvensi/perjanjian internasional di bidang hak kekayaan intelektual pada umumnya dan Hak Cipta pada khususnya yang memerlukan pengejawantahan lebih lanjut dalam sistem hukum nasionalnya;

c. bahwa perkembangan di bidang perdagangan, industri, dan investasi telah sedemikian pesat sehingga memerlukan peningkatan perlindungan bagi Pencipta dan Pemilik Hak Terkait dengan tetap memperhatikan kepentingan masyarakat luas;

d. bahwa dengan memperhatikan pengalaman dalam melaksanakan Undang-undang Hak Cipta yang ada, dipandang perlu untuk menetapkan Undang-undang Hak Cipta yang baru menggantikan Undang-undang Nomor 6 Tahun 1982 tentang Hak Cipta sebagaimana telah diubah dengan Undang-undang Nomor 7 Tahun 1987 dan terakhir diubah dengan Undang-undang Nomor 12 Tahun 1997;

e. bahwa berdasarkan pertimbangan sebagaimana tersebut dalam huruf a, huruf b, huruf c, dan huruf d, dibutuhkan Undang-undang tentang Hak Cipta.

Mengingat: 1. Pasal 5 ayat (1), Pasal 20 ayat (1), Pasal 28 C ayat (1), dan Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;

2. Undang-undang Nomor 7 Tahun 1994 tentang Pengesahan *Agreement Establishing the World Trade Organization* (Pembentukan Organisasi Perdagangan Dunia), (Lembaran Negara Tahun 1994 Nomor 57, Tambahan Lembaran Negara Nomor 3564).

Dengan Persetujuan

DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA

MEMUTUSKAN:

Menetapkan: UNDANG-UNDANG TENTANG HAK CIPTA

BAB I
KETENTUAN UMUM

Pasal 1

Dalam Undang-undang ini yang dimaksud dengan:

1. Hak Cipta adalah hak eksklusif bagi Pencipta atau penerima hak untuk mengumumkan atau memperbanyak Ciptaannya atau memberikan izin untuk itu dengan tidak mengurangi pembatasan-pembatasan menurut peraturan perundang-undangan yang berlaku.
2. Pencipta adalah seorang atau beberapa orang secara bersama-sama yang atas inspirasinya melahirkan suatu Ciptaan berdasarkan kemampuan pikiran, imajinasi, kecekatan, keterampilan, atau keahlian yang dituangkan ke dalam bentuk yang khas dan bersifat pribadi.
3. Ciptaan adalah hasil setiap karya Pencipta yang menunjukkan keasliannya dalam lapangan ilmu pengetahuan, seni, atau sastra.
4. Pemegang Hak Cipta adalah Pencipta sebagai Pemilik Hak Cipta, atau pihak yang menerima hak tersebut dari Pencipta, atau pihak lain yang menerima lebih lanjut hak dari pihak yang menerima hak tersebut.
5. Pengumuman adalah pembacaan, penyiaran, pameran, penjualan, pengedaran, atau penyebaran suatu Ciptaan dengan menggunakan alat apa pun, termasuk media internet, atau melakukan dengan cara apa pun sehingga suatu Ciptaan dapat dibaca, didengar, atau dilihat orang lain.
6. Perbanyakan adalah penambahan jumlah sesuatu Ciptaan, baik secara keseluruhan maupun bagian yang sangat substansial dengan menggunakan bahan-bahan yang sama ataupun tidak sama, termasuk mengalihwujudkan secara permanen atau temporer.
7. Potret adalah gambar dari wajah orang yang digambarkan, baik bersama bagian tubuh lainnya ataupun tidak, yang diciptakan dengan cara dan alat apa pun.
8. Program Komputer adalah sekumpulan instruksi yang diwujudkan dalam bentuk bahasa, kode, skema, ataupun bentuk lain, yang apabila digabungkan dengan media yang dapat dibaca dengan komputer akan mampu membuat komputer bekerja untuk melakukan fungsi-fungsi khusus atau untuk mencapai hasil yang khusus, termasuk persiapan dalam merancang instruksi-instruksi tersebut.
9. Hak Terkait adalah hak yang berkaitan dengan Hak Cipta, yaitu hak eksklusif bagi Pelaku untuk memperbanyak atau menyiarkan pertunjukannya; bagi Produser Rekaman Suara untuk memperbanyak atau menyewakan karya rekaman suara atau rekaman bunyinya; dan bagi Lembaga Penyiaran untuk membuat, memperbanyak, atau menyiarkan karya siarannya.
10. Pelaku adalah aktor, penyanyi, pemusik, penari, atau mereka yang menampilkan, memperagakan, mempertunjukkan, menyanyikan, menyampaikan, mendeklamasikan, atau memainkan suatu karya musik, drama, tari, sastra, *folklor*, atau karya seni lainnya.

11. Produser Rekaman Suara adalah orang atau badan hukum yang pertama kali merekam dan memiliki tanggung jawab untuk melaksanakan perekaman suara atau perekaman bunyi, baik perekaman dari suatu pertunjukan maupun perekaman suara atau perekaman bunyi lainnya.
12. Lembaga Penyiaran adalah organisasi penyelenggara siaran yang berbentuk badan hukum, yang melakukan penyiaran atas suatu karya siaran dengan menggunakan transmisi dengan atau tanpa kabel atau melalui sistem elektromagnetik.
13. Permohonan adalah Permohonan pendaftaran Ciptaan yang diajukan oleh pemohon kepada Direktorat Jenderal.
14. Lisensi adalah izin yang diberikan oleh Pemegang Hak Cipta atau Pemegang Hak Terkait kepada pihak lain untuk mengumumkan dan/atau memperbanyak Ciptaannya atau produk Hak Terkaitnya dengan persyaratan tertentu.
15. Kuasa adalah konsultan Hak Kekayaan Intelektual sebagaimana diatur dalam ketentuan Undang-undang ini.
16. Menteri adalah Menteri yang membawahkan departemen yang salah satu lingkup tugas dan tanggung jawabnya meliputi pembinaan di bidang Hak Kekayaan Intelektual, termasuk Hak Cipta.
17. Direktorat Jenderal adalah Direktorat Jenderal Hak Kekayaan Intelektual yang berada di bawah departemen yang dipimpin oleh Menteri.

BAB II
LINGKUP HAK CIPTA

Bagian Pertama
Fungsi dan Sifat Hak Cipta

Pasal 2

(1) Hak Cipta merupakan hak eksklusif bagi Pencipta atau Pemegang Hak Cipta untuk mengumumkan atau memperbanyak Ciptaannya, yang timbul secara otomatis setelah suatu ciptaan dilahirkan tanpa mengurangi pembatasan menurut peraturan perundang-undangan yang berlaku.

(2) Pencipta dan/atau Pemegang Hak Cipta atas karya sinematografi dan Program Komputer memiliki hak untuk memberikan izin atau melarang orang lain yang tanpa persetujuannya menyewakan Ciptaan tersebut untuk kepentingan yang bersifat komersial.

Pasal 3

(1) Hak Cipta dianggap sebagai benda bergerak.

(2) Hak Cipta dapat beralih atau dialihkan, baik seluruhnya maupun sebagian karena
   a. Pewarisan;
   b. Hibah;
   c. Wasiat;
   d. Perjanjian tertulis; atau
   e. Sebab-sebab lain yang dibenarkan oleh peraturan perundang-undangan.

Pasal 4

(1) Hak Cipta yang dimiliki oleh Pencipta, yang setelah Penciptanya meninggal dunia, menjadi milik ahli warisnya atau milik penerima wasiat, dan Hak Cipta tersebut tidak dapat disita, kecuali jika hak itu diperoleh secara melawan hukum.

(2) Hak Cipta yang tidak atau belum diumumkan yang setelah Penciptanya meninggal dunia, menjadi milik ahli warisnya atau milik penerima wasiat, dan Hak Cipta tersebut tidak dapat disita, kecuali jika hak itu diperoleh secara melawan hukum.

Bagian Kedua
Pencipta

Pasal 5

(1) Kecuali terbukti sebaliknya, yang dianggap sebagai Pencipta adalah:
   a. orang yang namanya terdaftar dalam Daftar Umum Ciptaan pada Direktorat Jenderal; atau
   b. orang yang namanya disebut dalam Ciptaan atau diumumkan sebagai Pencipta pada suatu Ciptaan.

(2) Kecuali terbukti sebaliknya, pada ceramah yang tidak menggunakan bahan tertulis dan tidak ada pemberitahuan siapa Penciptanya, orang yang berceramah dianggap sebagai Pencipta ceramah tersebut.

Pasal 6

Jika suatu Ciptaan terdiri atas beberapa bagian tersendiri yang diciptakan oleh dua orang atau lebih, yang dianggap sebagai Pencipta ialah orang yang memimpin serta mengawasi penyelesaian seluruh Ciptaan itu, atau dalam hal tidak ada orang tersebut, yang dianggap sebagai Pencipta adalah orang yang menghimpunnya dengan tidak mengurangi Hak Cipta masing-masing atas bagian Ciptaannya itu.

Pasal 7

Jika suatu Ciptaan yang dirancang seseorang diwujudkan dan dikerjakan oleh orang lain di bawah pimpinan dan pengawasan orang yang merancang, Penciptanya adalah orang yang merancang Ciptaan itu.

Pasal 8

(1) Jika suatu Ciptaan dibuat dalam hubungan dinas dengan pihak lain dalam lingkungan pekerjaannya, Pemegang Hak Cipta adalah pihak yang untuk dan dalam dinasnya Ciptaan itu dikerjakan, kecuali ada perjanjian lain antara kedua pihak dengan tidak mengurangi hak Pencipta apabila penggunaan Ciptaan itu diperluas sampai ke luar hubungan dinas.

(2) Ketentuan sebagaimana dimaksud pada ayat (1) berlaku pula bagi Ciptaan yang dibuat pihak lain berdasarkan pesanan yang dilakukan dalam hubungan dinas.

(3) Jika suatu Ciptaan dibuat dalam hubungan kerja atau berdasarkan pesanan, pihak yang membuat karya cipta itu dianggap sebagai Pencipta dan Pemegang Hak Cipta, kecuali apabila diperjanjikan lain antara kedua pihak.

Pasal 9

Jika suatu badan hukum mengumumkan bahwa Ciptaan berasal dari padanya dengan tidak menyebut seseorang sebagai Penciptanya, badan hukum tersebut dianggap sebagai Penciptanya, kecuali jika terbukti sebaliknya.

Bagian Ketiga
Hak Cipta atas Ciptaan yang Penciptanya Tidak Diketahui

Pasal 10

(1) Negara memegang Hak Cipta atas karya peninggalan prasejarah, sejarah, dan benda budaya nasional lainnya.

(2) Negara memegang Hak Cipta atas *folklor* dan hasil kebudayaan rakyat yang menjadi milik bersama, seperti cerita, hikayat, dongeng, legenda, babad, lagu, kerajinan tangan, koreografi, tarian, kaligrafi, dan karya seni lainnya.

(3) Untuk mengumumkan atau memperbanyak Ciptaan tersebut pada ayat (2), orang yang bukan warga negara Indonesia harus terlebih dahulu mendapat izin dari instansi yang terkait dalam masalah tersebut.

(4) Ketentuan lebih lanjut mengenai Hak Cipta yang dipegang oleh Negara sebagaimana dimaksud dalam Pasal ini, diatur dengan Peraturan Pemerintah.

Pasal 11

(1) Jika suatu Ciptaan tidak diketahui Penciptanya dan Ciptaan itu belum diterbitkan, Negara memegang Hak Cipta atas Ciptaan tersebut untuk kepentingan Penciptanya.

(2) Jika suatu Ciptaan telah diterbitkan tetapi tidak diketahui Penciptanya atau pada Ciptaan tersebut hanya tertera nama samaran Penciptanya, penerbit memegang Hak Cipta atas Ciptaan tersebut untuk kepentingan Penciptanya.

(3) Jika suatu Ciptaan telah diterbitkan tetapi tidak diketahui Penciptanya dan/atau penerbitnya, Negara memegang Hak Cipta atas Ciptaan tersebut untuk kepentingan Penciptanya.

Bagian Keempat
Ciptaan yang Dilindungi

Pasal 12

(1) Dalam Undang-undang ini Ciptaan yang dilindungi adalah Ciptaan dalam bidang ilmu pengetahuan, seni, dan sastra, yang mencakup:
   a. buku, Program Komputer, pamflet, perwajahan *(lay out)* karya tulis yang diterbitkan, dan semua hasil karya tulis lain;
   b. ceramah, kuliah, pidato, dan Ciptaan lain yang sejenis dengan itu;
   c. alat peraga yang dibuat untuk kepentingan pendidikan dan ilmu pengetahuan;
   d. lagu atau musik dengan atau tanpa teks;
   e. drama atau drama musikal, tari, koreografi, pewayangan, dan pantomim;
   f. seni rupa dalam segala bentuk seperti seni lukis, gambar, seni ukir, seni kaligrafi, seni pahat, seni patung, kolase, dan seni terapan;
   g. arsitektur;
   h. peta;
   i. seni batik;
   j. fotografi;
   k. sinematografi;
   l. terjemahan, tafsir, saduran, bunga rampai, *database*, dan karya lain dari hasil pengalihwujudan.

(2) Ciptaan sebagaimana dimaksud dalam huruf l dilindungi sebagai Ciptaan tersendiri dengan tidak mengurangi Hak Cipta atas Ciptaan asli.

(3) Perlindungan sebagaimana dimaksud pada ayat (l) dan ayat (2), termasuk juga semua Ciptaan yang tidak atau belum diumumkan, tetapi sudah merupakan suatu bentuk kesatuan yang nyata, yang memungkinkan Perbanyakan hasil karya itu.

Pasal 13

Tidak ada Hak Cipta atas:

a. hasil rapat terbuka lembaga-lembaga Negara;
b. peraturan perundang-undangan;
c. pidato kenegaraan atau pidato pejabat Pemerintah;
d. putusan pengadilan atau penetapan hakim; atau
e. keputusan badan arbitrase atau keputusan badan-badan sejenis lainnya.

Bagian Kelima
Pembatasan Hak Cipta

Pasal 14

Tidak dianggap sebagai pelanggaran Hak Cipta:

a. Pengumuman dan/atau Perbanyakan lambang Negara dan lagu kebangsaan menurut sifatnya yang asli;
b. Pengumuman dan/atau Perbanyakan segala sesuatu yang diumumkan dan/atau diperbanyak oleh atau atas nama Pemerintah, kecuali apabila Hak Cipta itu dinyatakan dilindungi, baik dengan peraturan perundang-undangan maupun dengan pernyataan pada Ciptaan itu sendiri atau ketika Ciptaan itu diumumkan dan/atau diperbanyak; atau
c. Pengambilan berita aktual baik seluruhnya maupun sebagian dari kantor berita, Lembaga Penyiaran, dan surat kabar atau sumber sejenis lain, dengan ketentuan sumbernya harus disebutkan secara lengkap.

Pasal 15

Dengan syarat bahwa sumbernya harus disebutkan atau dicantumkan, tidak dianggap sebagai pelanggaran Hak Cipta:

a. penggunaan Ciptaan pihak lain untuk kepentingan pendidikan, penelitian, penulisan karya ilmiah, penyusunan laporan, penulisan kritik atau tinjauan suatu masalah dengan tidak merugikan kepentingan yang wajar dari Pencipta;
b. pengambilan Ciptaan pihak lain, baik seluruhnya maupun sebagian, guna keperluan pembelaan di dalam atau di luar Pengadilan;
c. pengambilan Ciptaan pihak lain, baik seluruhnya maupun sebagian, guna keperluan:
   (i) ceramah yang semata-mata untuk tujuan pendidikan dan ilmu pengetahuan; atau
   (ii) pertunjukan atau pementasan yang tidak dipungut bayaran dengan ketentuan tidak merugikan kepentingan yang wajar dari Pencipta.
d. Perbanyakan suatu Ciptaan bidang ilmu pengetahuan, seni, dan sastra dalam huruf braille guna keperluan para tunanetra, kecuali jika Perbanyakan itu bersifat komersial;
e. Perbanyakan suatu Ciptaan selain Program Komputer, secara terbatas dengan cara atau alat apa pun atau proses yang serupa oleh perpustakaan umum, lembaga ilmu pengetahuan atau pendidikan, dan pusat dokumentasi yang nonkomersial semata-mata untuk keperluan aktivitasnya;
f. perubahan yang dilakukan berdasarkan pertimbangan pelaksanaan teknis atas karya arsitektur, seperti Ciptaan bangunan;
g. pembuatan salinan cadangan suatu Program Komputer oleh pemilik Program Komputer yang dilakukan semata-mata untuk digunakan sendiri.

Pasal 16

(1) Untuk kepentingan pendidikan, ilmu pengetahuan, serta kegiatan penelitian dan pengembangan, terhadap Ciptaan dalam bidang ilmu pengetahuan dan sastra, Menteri setelah mendengar pertimbangan Dewan Hak Cipta dapat:
   a. mewajibkan Pemegang Hak Cipta untuk melaksanakan sendiri penerjemahan dan/atau Perbanyakan Ciptaan tersebut di wilayah Negara Republik Indonesia dalam waktu yang ditentukan;
   b. mewajibkan Pemegang Hak Cipta yang bersangkutan untuk memberikan izin kepada pihak lain untuk menerjemahkan dan/atau memperbanyak Ciptaan tersebut di wilayah Negara Republik Indonesia dalam waktu yang ditentukan dalam hal Pemegang Hak Cipta yang bersangkutan tidak melaksanakan sendiri atau melaksanakan sendiri kewajiban sebagaimana dimaksud dalam huruf a;
   c. menunjuk pihak lain untuk melakukan penerjemahan dan/atau Perbanyakan Ciptaan tersebut dalam hal Pemegang Hak Cipta tidak melaksanakan kewajiban sebagaimana dimaksud dalam huruf b.

(2) Kewajiban untuk menerjemahkan sebagaimana dimaksud pada ayat (1), dilaksanakan setelah lewat jangka waktu 3 (tiga) tahun sejak diterbitkannya Ciptaan di bidang ilmu pengetahuan dan sastra selama karya tersebut belum pernah diterjemahkan ke dalam bahasa Indonesia.

(3) Kewajiban untuk memperbanyak sebagaimana dimaksud pada ayat (1), dilaksanakan setelah lewat jangka waktu:
   a. 3 (tiga) tahun sejak diterbitkannya buku di bidang matematika dan ilmu pengetahuan alam dan buku itu belum pernah diperbanyak di wilayah Negara Republik Indonesia;
   b. 5 (lima) tahun sejak diterbitkannya buku di bidang ilmu sosial dan buku itu belum pernah diperbanyak di wilayah Negara Republik Indonesia;
   c. 7 (tujuh) tahun sejak diumumkannya buku di bidang seni dan sastra dan buku itu belum pernah diperbanyak di wilayah Negara Republik Indonesia.

(4) Penerjemahan atau Perbanyakan sebagaimana dimaksud pada ayat (1) hanya dapat digunakan untuk pemakaian di dalam wilayah Negara Republik Indonesia dan tidak untuk diekspor ke wilayah Negara lain.

(5) Pelaksanaan ketentuan sebagaimana dimaksud pada ayat (1) huruf b dan huruf c disertai pemberian imbalan yang besarnya ditetapkan dengan Keputusan Presiden.

(6) Ketentuan tentang tata cara pengajuan Permohonan untuk menerjemahkan dan/atau memperbanyak sebagaimana dimaksud pada ayat (1), ayat (2), ayat (3), dan ayat (4) diatur lebih lanjut dengan Keputusan Presiden.

Pasal 17

Pemerintah melarang Pengumuman setiap Ciptaan yang bertentangan dengan kebijaksanaan Pemerintah di bidang agama, pertahanan dan keamanan Negara, kesusilaan, serta ketertiban umum setelah mendengar pertimbangan Dewan Hak Cipta.

Pasal 18

(1) Pengumuman suatu Ciptaan yang diselenggarakan oleh Pemerintah untuk kepentingan nasional melalui radio, televisi dan/atau sarana lain dapat dilakukan dengan tidak meminta izin kepada Pemegang Hak Cipta dengan ketentuan tidak merugikan kepentingan yang wajar dari Pemegang Hak Cipta, dan kepada Pemegang Hak Cipta diberikan imbalan yang layak.

(2) Lembaga Penyiaran yang mengumumkan Ciptaan sebagaimana dimaksud pada ayat (1) berwenang mengabadikan Ciptaan itu semata-mata untuk Lembaga Penyiaran itu sendiri dengan ketentuan bahwa untuk penyiaran selanjutnya, Lembaga Penyiaran tersebut harus memberikan imbalan yang layak kepada Pemegang Hak Cipta yang bersangkutan.

Bagian Keenam
Hak Cipta atas Potret

Pasal 19

(1) Untuk memperbanyak atau mengumumkan Ciptaannya, Pemegang Hak Cipta atas Potret seseorang harus terlebih dahulu mendapatkan izin dari orang yang dipotret, atau izin ahli warisnya dalam jangka waktu 10 (sepuluh) tahun setelah orang yang dipotret meninggal dunia.

(2) Jika suatu Potret memuat gambar 2 (dua) orang atau lebih, untuk Perbanyakan atau Pengumuman setiap orang yang dipotret, apabila Pengumuman atau Perbanyakan itu memuat juga orang lain dalam potret itu, Pemegang Hak Cipta harus terlebih dahulu mendapatkan izin dari setiap orang dalam Potret itu, atau izin ahli waris masing-masing dalam jangka waktu 10 (sepuluh) tahun setelah yang dipotret meninggal dunia.

(3) Ketentuan dalam pasal ini hanya berlaku terhadap Potret yang dibuat:
   a. atas permintaan sendiri dari orang yang dipotret;
   b. atas permintaan yang dilakukan atas nama orang yang dipotret; atau
   c. untuk kepentingan orang yang dipotret.

Pasal 20

Pemegang Hak Cipta atas Potret tidak boleh mengumumkan potret yang dibuat:
a. tanpa persetujuan dari orang yang dipotret;
b. tanpa persetujuan orang lain atas nama yang dipotret; atau
c. tidak untuk kepentingan yang dipotret,

apabila Pengumuman itu bertentangan dengan kepentingan yang wajar dari orang yang dipotret, atau dari salah seorang ahli warisnya apabila orang yang dipotret sudah meninggal dunia.

Pasal 21

Tidak dianggap sebagai pelanggaran Hak Cipta, pemotretan untuk diumumkan atas seorang Pelaku atau lebih dalam suatu pertunjukan umum walaupun yang bersifat komersial, kecuali dinyatakan lain oleh orang yang berkepentingan.

Pasal 22

Untuk kepentingan keamanan umum dan/atau untuk keperluan proses peradilan pidana, Potret seseorang dalam keadaan bagaimanapun juga dapat diperbanyak dan diumumkan oleh instansi yang berwenang.

Pasal 23

Kecuali terdapat persetujuan lain antara Pemegang Hak Cipta dan pemilik Ciptaan fotografi, seni lukis, gambar, arsitektur, seni pahat dan/atau hasil seni lain, pemilik berhak tanpa persetujuan Pemegang Hak Cipta untuk mempertunjukkan Ciptaan di dalam suatu pameran untuk umum atau memperbanyaknya dalam satu katalog tanpa mengurangi ketentuan Pasal 19 dan Pasal 20 apabila hasil karya seni tersebut berupa Potret.

Bagian Ketujuh
Hak Moral

Pasal 24

(1) Pencipta atau ahli warisnya berhak menuntut Pemegang Hak Cipta supaya nama Pencipta tetap dicantumkan dalam Ciptaannya.

(2) Suatu Ciptaan tidak boleh diubah walaupun Hak Ciptanya telah diserahkan kepada pihak lain, kecuali dengan persetujuan Pencipta atau dengan persetujuan ahli warisnya dalam hal Pencipta telah meninggal dunia.

(3) Ketentuan sebagaimana dimaksud pada ayat (2) berlaku juga terhadap perubahan judul dan anak judul Ciptaan, pencantuman dan perubahan nama atau nama samaran Pencipta.

(4) Pencipta tetap berhak mengadakan perubahan pada Ciptaannya sesuai dengan kepatutan dalam masyarakat.

Pasal 25

(1) Informasi elektronik tentang informasi manajemen hak Pencipta tidak boleh ditiadakan atau diubah.

(2) Ketentuan lebih lanjut sebagaimana dimaksud pada ayat (1) diatur dengan Peraturan Pemerintah.

Pasal 26

(1) Hak Cipta atas suatu Ciptaan tetap berada di tangan Pencipta selama kepada pembeli Ciptaan itu tidak diserahkan seluruh Hak Cipta dari Pencipta itu.

(2) Hak Cipta yang dijual untuk seluruh atau sebagian tidak dapat dijual untuk kedua kalinya oleh penjual yang sama.

(3) Dalam hal timbul sengketa antara beberapa pembeli Hak Cipta yang sama atas suatu Ciptaan, perlindungan diberikan kepada pembeli yang lebih dahulu memperoleh Hak Cipta itu.

Bagian Kedelapan
Sarana Kontrol Teknologi

Pasal 27

Kecuali atas izin Pencipta, sarana kontrol teknologi sebagai pengaman hak Pencipta tidak diperbolehkan dirusak, ditiadakan, atau dibuat tidak berfungsi.

Pasal 28

(1) Ciptaan-ciptaan yang menggunakan sarana produksi berteknologi tinggi, khususnya di bidang cakram optik *(optical disc)*, wajib memenuhi semua peraturan perizinan dan persyaratan produksi yang ditetapkan oleh instansi yang berwenang.

(2) Ketentuan lebih lanjut mengenai sarana produksi berteknologi tinggi yang memproduksi cakram optik sebagaimana diatur pada ayat (1) diatur dengan Peraturan Pemerintah.

BAB III
MASA BERLAKU HAK CIPTA

Pasal 29

(1) Hak Cipta atas Ciptaan:
   a. buku, pamflet, dan semua hasil karya tulis lain;
   b. drama atau drama musikal, tari, koreografi;
   c. segala bentuk seni rupa, seperti seni lukis, seni pahat, dan seni patung;
   d. seni batik;
   e. lagu atau musik dengan atau tanpa teks;
   f. arsitektur;
   g. ceramah, kuliah, pidato dan Ciptaan sejenis lain;
   h. alat peraga;
   i. peta;
   j. terjemahan, tafsir, saduran, dan bunga rampai

   berlaku selama hidup Pencipta dan terus berlangsung hingga 50 (lima puluh) tahun setelah Pencipta meninggal dunia.

(2) Untuk Ciptaan sebagaimana dimaksud pada ayat (1) yang dimiliki oleh 2 (dua) orang atau lebih, Hak Cipta berlaku selama hidup Pencipta yang meninggal dunia paling akhir dan berlangsung hingga 50 (lima puluh) tahun sesudahnya.

Pasal 30

(1) Hak Cipta atas Ciptaan:
   a. Program Komputer;
   b. sinematografi;
   c. fotografi;
   d. *database;* dan
   e. karya hasil pengalihwujudan,

   berlaku selama 50 (lima puluh) tahun sejak pertama kali diumumkan.

(2) Hak Cipta atas perwajahan karya tulis yang diterbitkan berlaku selama 50 (lima puluh) tahun sejak pertama kali diterbitkan.

(3) Hak Cipta atas Ciptaan sebagaimana dimaksud pada ayat (1) dan ayat (2) pasal ini serta Pasal 29 ayat (1) yang dimiliki atau dipegang oleh suatu badan hukum berlaku selama 50 (lima puluh) tahun sejak pertama kali diumumkan.

Pasal 31

(1) Hak Cipta atas Ciptaan yang dipegang atau dilaksanakan oleh Negara berdasarkan:
   a. Pasal 10 ayat (2) berlaku tanpa batas waktu;
   b. Pasal 11 ayat (1) dan ayat (3) berlaku selama 50 (lima puluh) tahun sejak Ciptaan tersebut pertama kali diketahui umum.

(2) Hak Cipta atas Ciptaan yang dilaksanakan oleh penerbit berdasarkan Pasal 11 ayat (2) berlaku selama 50 (lima puluh) tahun sejak Ciptaan tersebut pertama kali diterbitkan.

Pasal 32

(1) Jangka waktu berlakunya Hak Cipta atas Ciptaan yang diumumkan bagian demi bagian dihitung mulai tanggal Pengumuman bagian yang terakhir.

(2) Dalam menentukan jangka waktu berlakunya Hak Cipta atas Ciptaan yang terdiri atas 2 (dua) jilid atau lebih, demikian pula ikhtisar dan berita yang diumumkan secara berkala dan tidak bersamaan waktunya, setiap jilid atau ikhtisar dan berita itu masing-masing dianggap sebagai Ciptaan tersendiri.

Pasal 33

Jangka waktu perlindungan bagi hak Pencipta sebagaimana dimaksud dalam:

a. Pasal 24 ayat (1) berlaku tanpa batas waktu;
b. Pasal 24 ayat (2) dan ayat (3) berlaku selama berlangsungnya jangka waktu Hak Cipta atas Ciptaan yang bersangkutan, kecuali untuk pencantuman dan perubahan nama atau nama samaran Penciptanya.

Pasal 34

Tanpa mengurangi hak Pencipta atas jangka waktu perlindungan Hak Cipta yang dihitung sejak lahirnya suatu Ciptaan, penghitungan jangka waktu perlindungan bagi Ciptaan yang dilindungi:

a. selama 50 (lima puluh) tahun;
b. selama hidup Pencipta dan terus berlangsung hingga 50 (lima puluh) tahun setelah Pencipta meninggal dunia

dimulai sejak 1 Januari untuk tahun berikutnya setelah Ciptaan tersebut diumumkan, diketahui oleh umum, diterbitkan, atau setelah Pencipta meninggal dunia.

BAB IV
PENDAFTARAN CIPTAAN

Pasal 35

(1) Direktorat Jenderal menyelenggarakan pendaftaran Ciptaan dan dicatat dalam Daftar Umum Ciptaan.

(2) Daftar Umum Ciptaan tersebut dapat dilihat oleh setiap orang tanpa dikenai biaya.

(3) Setiap orang dapat memperoleh untuk dirinya sendiri suatu petikan dari Daftar Umum Ciptaan tersebut dengan dikenai biaya.

(4) Ketentuan tentang pendaftaran sebagaimana dimaksud pada ayat (1) tidak merupakan kewajiban untuk mendapatkan Hak Cipta.

Pasal 36

Pendaftaran Ciptaan dalam Daftar Umum Ciptaan tidak mengandung arti sebagai pengesahan atas isi, arti, maksud, atau bentuk dari Ciptaan yang didaftar.

Pasal 37

(1) Pendaftaran Ciptaan dalam Daftar Umum Ciptaan dilakukan atas Permohonan yang diajukan oleh Pencipta atau oleh Pemegang Hak Cipta atau Kuasa.

(2) Permohonan diajukan kepada Direktorat Jenderal dengan surat rangkap 2 (dua) yang ditulis dalam bahasa Indonesia dan disertai contoh Ciptaan atau penggantinya dengan dikenai biaya.

(3) Terhadap Permohonan sebagaimana dimaksud pada ayat (1), Direktorat Jenderal akan memberikan keputusan paling lama 9 (sembilan) bulan terhitung sejak tanggal diterimanya Permohonan secara lengkap.

(4) Kuasa sebagaimana dimaksud pada ayat (1) adalah konsultan yang terdaftar pada Direktorat Jenderal.

(5) Ketentuan mengenai syarat-syarat dan tata cara untuk dapat diangkat dan terdaftar sebagai konsultan sebagaimana dimaksud pada ayat (4) diatur lebih lanjut dalam Peraturan Pemerintah.

(6) Ketentuan lebih lanjut tentang syarat dan tata cara Permohonan ditetapkan dengan Keputusan Presiden.

Pasal 38

Dalam hal Permohonan diajukan oleh lebih dari seorang atau suatu badan hukum yang secara bersama-sama berhak atas suatu Ciptaan, Permohonan tersebut dilampiri salinan resmi akta atau keterangan tertulis yang membuktikan hak tersebut.

Pasal 39

Dalam Daftar Umum Ciptaan dimuat, antara lain:
a. nama Pencipta dan Pemegang Hak Cipta;
b. tanggal penerimaan surat Permohonan;
c. tanggal lengkapnya persyaratan menurut Pasal 37; dan
d. nomor pendaftaran Ciptaan.

Pasal 40

(1) Pendaftaran Ciptaan dianggap telah dilakukan pada saat diterimanya Permohonan oleh Direktorat Jenderal dengan lengkap menurut Pasal 37, atau pada saat diterimanya Permohonan dengan lengkap menurut Pasal 37 dan Pasal 38 jika Permohonan diajukan oleh lebih dari seorang atau satu badan hukum sebagaimana dimaksud dalam Pasal 38.

(2) Pendaftaran sebagaimana dimaksud pada ayat (1) diumumkan dalam Berita Resmi Ciptaan oleh Direktorat Jenderal.

Pasal 41

(1) Pemindahan hak atas pendaftaran Ciptaan, yang terdaftar menurut Pasal 39 yang terdaftar dalam satu nomor, hanya diperkenankan jika seluruh Ciptaan yang terdaftar itu dipindahkan haknya kepada penerima hak.

(2) Pemindahan hak tersebut dicatat dalam Daftar Umum Ciptaan atas permohonan tertulis dari kedua belah pihak atau dari penerima hak dengan dikenai biaya.

(3) Pencatatan pemindahan hak tersebut diumumkan dalam Berita Resmi Ciptaan oleh Direktorat Jenderal.

Pasal 42

Dalam hal Ciptaan didaftar menurut Pasal 37 ayat (1) dan ayat (2) serta Pasal 39, pihak lain yang menurut Pasal 2 berhak atas Hak Cipta dapat mengajukan gugatan pembatalan melalui Pengadilan Niaga.

Pasal 43

(1) Perubahan nama dan/atau perubahan alamat orang atau badan hukum yang namanya tercatat dalam Daftar Umum Ciptaan sebagai Pencipta atau Pemegang Hak Cipta, dicatat dalam Daftar Umum Ciptaan atas permintaan tertulis Pencipta atau Pemegang Hak Cipta yang mempunyai nama dan alamat itu dengan dikenai biaya.

(2) Perubahan nama dan/atau perubahan alamat tersebut diumumkan dalam Berita Resmi Ciptaan oleh Direktorat Jenderal.

Pasal 44

Kekuatan hukum dari suatu pendaftaran Ciptaan hapus karena:

a. penghapusan atas permohonan orang atau badan hukum yang namanya tercatat sebagai Pencipta atau Pemegang Hak Cipta;
b. lampau waktu sebagaimana dimaksud dalam Pasal 29, Pasal 30, dan Pasal 31 dengan mengingat Pasal 32;
c. dinyatakan batal oleh putusan pengadilan yang telah memperoleh kekuatan hukum tetap.

BAB V
LISENSI

Pasal 45

(1) Pemegang Hak Cipta berhak memberikan Lisensi kepada pihak lain berdasarkan surat perjanjian lisensi untuk melaksanakan perbuatan sebagaimana dimaksud dalam Pasal 2.

(2) Kecuali diperjanjikan lain, lingkup Lisensi sebagaimana dimaksud pada ayat (1) meliputi semua perbuatan sebagaimana dimaksud dalam Pasal 2 berlangsung selama jangka waktu Lisensi diberikan dan berlaku untuk seluruh wilayah Negara Republik Indonesia.

(3) Kecuali diperjanjikan lain, pelaksanaan perbuatan sebagaimana dimaksud pada ayat (1) dan ayat (2) disertai dengan kewajiban pemberian royalti kepada Pemegang Hak Cipta oleh penerima Lisensi.

(4) Jumlah royalti yang wajib dibayarkan kepada Pemegang Hak Cipta oleh penerima Lisensi adalah berdasarkan kesepakatan kedua belah pihak dengan berpedoman kepada kesepakatan organisasi profesi.

Pasal 46

Kecuali diperjanjikan lain, Pemegang Hak Cipta tetap boleh melaksanakan sendiri atau memberikan Lisensi kepada pihak ketiga untuk melaksanakan perbuatan sebagaimana dimaksud dalam Pasal 2.

Pasal 47

(1) Perjanjian Lisensi dilarang memuat ketentuan yang dapat menimbulkan akibat yang merugikan perekonomian Indonesia atau memuat ketentuan yang mengakibatkan persaingan usaha tidak sehat sebagaimana diatur dalam peraturan perundang-undangan yang berlaku.

(2) Agar dapat mempunyai akibat hukum terhadap pihak ketiga, perjanjian Lisensi wajib dicatatkan di Direktorat Jenderal.

(3) Direktorat Jenderal wajib menolak pencatatan perjanjian Lisensi yang memuat ketentuan sebagaimana dimaksud pada ayat (1).

(4) Ketentuan lebih lanjut mengenai pencatatan perjanjian Lisensi diatur dengan Keputusan Presiden.

BAB VI
DEWAN HAK CIPTA

Pasal 48

(1) Untuk membantu Pemerintah dalam memberikan penyuluhan dan pembimbingan serta pembinaan Hak Cipta, dibentuk Dewan Hak Cipta.

(2) Keanggotaan Dewan Hak Cipta terdiri atas wakil pemerintah, wakil organisasi profesi, dan anggota masyarakat yang memiliki kompetensi di bidang Hak Cipta, yang diangkat dan diberhentikan oleh Presiden atas usul Menteri.

(3) Ketentuan lebih lanjut mengenai tugas, fungsi, susunan, tata kerja, pembiayaan, masa bakti Dewan Hak Cipta ditetapkan dengan Peraturan Pemerintah.

(4) Biaya untuk Dewan Hak Cipta sebagaimana dimaksud pada ayat (3) dibebankan kepada anggaran belanja departemen yang melakukan pembinaan di bidang Hak Kekayaan Intelektual.

BAB VII
HAK TERKAIT

Pasal 49

(1) Pelaku memiliki hak eksklusif untuk memberikan izin atau melarang pihak lain yang tanpa persetujuannya membuat, memperbanyak, atau menyiarkan rekaman suara dan/atau gambar pertunjukannya.

(2) Produser Rekaman Suara memiliki hak eksklusif untuk memberikan izin atau melarang pihak lain yang tanpa persetujuannya memperbanyak dan/atau menyewakan Karya Rekaman suara atau rekaman bunyi.

(3) Lembaga Penyiaran memiliki hak eksklusif untuk memberikan izin atau melarang pihak lain yang tanpa persetujuannya membuat, memperbanyak, dan/atau menyiarkan ulang karya siarannya melalui transmisi dengan atau tanpa kabel, atau melalui sistem elektromagnetik lain.

Pasal 50

(1) Jangka waktu perlindungan bagi:
   a. Pelaku, berlaku selama 50 (lima puluh) tahun sejak karya tersebut pertama kali dipertunjukkan atau dimasukkan ke dalam media audio atau media audiovisual;
   b. Produser Rekaman Suara, berlaku selama 50 (lima puluh) tahun sejak karya tersebut selesai direkam;
   c. Lembaga Penyiaran, berlaku selama 20 (dua puluh) tahun sejak karya siaran tersebut pertama kali disiarkan.

(2) Penghitungan jangka waktu perlindungan sebagaimana dimaksud pada ayat (1) dimulai sejak tanggal 1 Januari tahun berikutnya setelah:
   a. karya pertunjukan selesai dipertunjukkan atau dimasukkan ke dalam media audio atau media audiovisual;
   b. karya rekaman suara selesai direkam;
   c. karya siaran selesai disiarkan untuk pertama kali.

Pasal 51

Ketentuan sebagaimana dimaksud dalam Pasal 3, Pasal 4, Pasal 5, Pasal 6, Pasal 7, Pasal 8, Pasal 9, Pasal 10, Pasal 11, Pasal 14 huruf b dan huruf c, Pasal 15, Pasal 17, Pasal 18, Pasal 24, Pasal 25, Pasal 26, Pasal 27, Pasal 28, Pasal 35, Pasal 36, Pasal 37, Pasal 38, Pasal 39, Pasal 40, Pasal 41, Pasal 42, Pasal 43, Pasal 44, Pasal 45, Pasal 46, Pasal 47, Pasal 48, Pasal 52, Pasal 53, Pasal 54, Pasal 55, Pasal 56, Pasal 57, Pasal 58, Pasal 59, Pasal 60, Pasal 61, Pasal 62, Pasal 63, Pasal 64, Pasal 65, Pasal 66, Pasal 68, Pasal 69, Pasal 70, Pasal 71, Pasal 74, Pasal 75, Pasal 76, Pasal 77 berlaku *mutatis mutandis* terhadap Hak Terkait.

BAB VIII
PENGELOLAAN HAK CIPTA

Pasal 52

Penyelenggaraan administrasi Hak Cipta sebagaimana diatur dalam Undang-undang ini dilaksanakan oleh Direktorat Jenderal.

Pasal 53

Direktorat Jenderal menyelenggarakan sistem jaringan dokumentasi dan informasi Hak Cipta yang bersifat nasional, yang mampu menyediakan informasi tentang Hak Cipta seluas mungkin kepada masyarakat.

BAB IX
BIAYA

Pasal 54

(1) Untuk setiap pengajuan Permohonan, permintaan petikan Daftar Umum Ciptaan, pencatatan pengalihan Hak Cipta, pencatatan perubahan nama dan/atau alamat, pencatatan perjanjian Lisensi, pencatatan Lisensi wajib, serta lain-lain yang ditentukan dalam Undang-undang ini dikenai biaya yang besarnya ditetapkan dengan Peraturan Pemerintah.

(2) Ketentuan lebih lanjut mengenai persyaratan, jangka waktu, dan tata cara pembayaran biaya sebagaimana dimaksud pada ayat (1) diatur dengan Keputusan Presiden.

(3) Direktorat Jenderal dengan persetujuan Menteri dan Menteri Keuangan dapat menggunakan penerimaan yang berasal dari biaya sebagaimana dimaksud pada ayat (1) dan ayat (2) berdasarkan perundang-undangan yang berlaku.

BAB X
PENYELESAIAN SENGKETA

Pasal 55

Penyerahan Hak Cipta atas seluruh Ciptaan kepada pihak lain tidak mengurangi hak Pencipta atau ahli warisnya untuk menggugat yang tanpa persetujuannya:

a. meniadakan nama Pencipta yang tercantum pada Ciptaan itu;
b. mencantumkan nama Pencipta pada Ciptaannya;
c. mengganti atau mengubah judul Ciptaan; atau
d. mengubah isi Ciptaan.

Pasal 56

(1) Pemegang Hak Cipta berhak mengajukan gugatan ganti rugi kepada Pengadilan Niaga atas pelanggaran Hak Ciptaannya dan meminta penyitaan terhadap benda yang diumumkan atau hasil Perbanyakan Ciptaan itu.

(2) Pemegang Hak Cipta juga berhak memohon kepada Pengadilan Niaga agar memerintahkan penyerahan seluruh atau sebagian penghasilan yang diperoleh dari penyelenggaraan ceramah, pertemuan ilmiah, pertunjukan atau pameran karya, yang merupakan hasil pelanggaran Hak Cipta.

(3) Sebelum menjatuhkan putusan akhir dan untuk mencegah kerugian yang lebih besar pada pihak yang haknya dilanggar, hakim dapat memerintahkan pelanggar untuk menghentikan kegiatan Pengumuman dan/atau Perbanyakan Ciptaan atau barang yang merupakan hasil pelanggaran Hak Cipta.

Pasal 57

Hak dari Pemegang Hak Cipta sebagaimana dimaksud dalam Pasal 56 tidak berlaku terhadap Ciptaan yang berada pada pihak yang dengan itikad baik memperoleh Ciptaan tersebut semata-mata untuk keperluan sendiri dan tidak digunakan untuk suatu kegiatan komersial dan/atau kepentingan yang berkaitan dengan kegiatan komersial.

Pasal 58

Pencipta atau ahli waris suatu Ciptaan dapat mengajukan gugatan ganti rugi atas pelanggaran sebagaimana dimaksud dalam Pasal 24.

Pasal 59

Gugatan sebagaimana dimaksud dalam Pasal 55, Pasal 56, dan Pasal 58 wajib diputus dalam tenggang waktu 90 (sembilan puluh) hari terhitung sejak gugatan didaftarkan di Pengadilan Niaga yang bersangkutan.

Pasal 60

(1) Gugatan atas pelanggaran Hak Cipta diajukan kepada Ketua Pengadilan Niaga.

(2) Panitera mendaftarkan gugatan tersebut pada ayat (1) pada tanggal gugatan diajukan dan kepada penggugat diberikan tanda terima tertulis yang ditandatangani oleh pejabat yang berwenang dengan tanggal yang sama dengan tanggal pendaftaran.

(3) Panitera menyampaikan gugatan kepada Ketua Pengadilan Niaga paling lama 2 (dua) hari terhitung setelah gugatan didaftarkan.

(4) Dalam jangka waktu paling lama 3 (tiga) hari setelah gugatan didaftarkan, Pengadilan Niaga mempelajari gugatan dan menetapkan hari sidang.

(5) Sidang pemeriksaan atas gugatan dimulai dalam jangka waktu paling lama 60 (enam puluh) hari setelah gugatan didaftarkan.

Pasal 61

(1) Pemanggilan para pihak dilakukan oleh juru sita paling lama 7 (tujuh) hari setelah gugatan didaftarkan.

(2) Putusan atas gugatan harus diucapkan paling lama 90 (sembilan puluh) hari setelah gugatan didaftarkan dan dapat diperpanjang paling lama 30 (tiga puluh) hari atas persetujuan Ketua Mahkamah Agung.

(3) Putusan atas gugatan sebagaimana dimaksud pada ayat (2) yang memuat secara lengkap pertimbangan hukum yang mendasari putusan tersebut harus diucapkan dalam sidang terbuka untuk umum dan apabila diminta dapat dijalankan terlebih dahulu meskipun terhadap putusan tersebut diajukan suatu upaya hukum.

(4) Isi putusan Pengadilan Niaga sebagaimana dimaksud pada ayat (3) wajib disampaikan oleh juru sita kepada para pihak paling lama 14 (empat belas) hari setelah putusan atas gugatan diucapkan.

Pasal 62

(1) Terhadap putusan Pengadilan Niaga sebagaimana dimaksud dalam Pasal 61 ayat (4) hanya dapat diajukan kasasi.

(2) Permohonan kasasi sebagaimana dimaksud pada ayat (1) diajukan paling lama 14 (empat belas) hari setelah tanggal putusan yang dimohonkan kasasi diucapkan atau diberitahukan kepada para pihak dengan mendaftarkan kepada Pengadilan yang telah memutus gugatan tersebut.

(3) Panitera mendaftar permohonan kasasi pada tanggal permohonan yang bersangkutan diajukan dan kepada pemohon kasasi diberikan tanda terima tertulis yang ditandatangani oleh panitera dengan tanggal yang sama dengan tanggal penerimaan pendaftaran.

Pasal 63

(1) Pemohon kasasi wajib menyampaikan memori kasasi kepada panitera dalam waktu 14 (empat belas) hari sejak tanggal permohonan kasasi didaftarkan sebagaimana dimaksud dalam Pasal 62 ayat (2).

(2) Panitera wajib mengirimkan permohonan kasasi dan memori kasasi sebagaimana dimaksud pada ayat (1) kepada pihak termohon kasasi paling lama 7 (tujuh) hari setelah memori kasasi diterima oleh panitera.

(3) Termohon kasasi dapat mengajukan kontra memori kasasi kepada panitera paling lama 14 (empat belas) hari setelah tanggal termohon kasasi menerima memori kasasi sebagaimana dimaksud pada ayat (2) dan panitera wajib menyampaikan kontra memori kasasi kepada pemohon kasasi paling lama 7 (tujuh) hari setelah kontra memori kasasi diterima oleh panitera.

(4) Panitera wajib mengirimkan berkas perkara kasasi yang bersangkutan kepada Mahkamah Agung paling lama 14 (empat belas) hari setelah lewat jangka waktu sebagaimana dimaksud pada ayat (3).

Pasal 64

(1) Mahkamah Agung wajib mempelajari berkas perkara kasasi dan menetapkan hari sidang paling lama 7 (tujuh) hari setelah permohonan kasasi diterima oleh Mahkamah Agung.

(2) Sidang pemeriksaan atas permohonan kasasi mulai dilakukan paling lama 60 (enam puluh) hari setelah permohonan kasasi diterima oleh Mahkamah Agung.

(3) Putusan atas permohonan kasasi harus diucapkan paling lama 90 (sembilan puluh) hari setelah permohonan kasasi diterima oleh Mahkamah Agung.

(4) Putusan atas permohonan kasasi sebagaimana dimaksud pada ayat (3) yang memuat secara lengkap pertimbangan hukum yang mendasari putusan tersebut harus diucapkan dalam sidang yang terbuka untuk umum.

(5) Panitera Mahkamah Agung wajib menyampaikan salinan putusan kasasi kepada panitera paling lama 7 (tujuh) hari setelah putusan atas permohonan kasasi diucapkan.

(6) Juru sita wajib menyampaikan salinan putusan kasasi sebagaimana dimaksud pada ayat (5) kepada pemohon kasasi dan termohon kasasi paling lama 7 (tujuh) hari setelah putusan kasasi diterima oleh panitera.

Pasal 65

Selain penyelesaian sengketa sebagaimana dimaksud dalam Pasal 55 dan Pasal 56, para pihak dapat menyelesaikan perselisihan tersebut melalui arbitrase atau alternatif penyelesaian sengketa.

Pasal 66

Hak untuk mengajukan gugatan sebagaimana dimaksud dalam Pasal 55, Pasal 56, dan Pasal 65 tidak mengurangi hak Negara untuk melakukan tuntutan pidana terhadap pelanggaran Hak Cipta.

BAB XI
PENETAPAN SEMENTARA PENGADILAN

Pasal 67

Atas permintaan pihak yang merasa dirugikan, Pengadilan Niaga dapat menerbitkan surat penetapan dengan segera dan efektif untuk:

a. mencegah berlanjutnya pelanggaran Hak Cipta, khususnya mencegah masuknya barang yang diduga melanggar Hak Cipta atau Hak Terkait ke dalam jalur perdagangan, termasuk tindakan importasi;
b. menyimpan bukti yang berkaitan dengan pelanggaran Hak Cipta atau Hak Terkait tersebut guna menghindari terjadinya penghilangan barang bukti;
c. meminta kepada pihak yang merasa dirugikan, untuk memberikan bukti yang menyatakan bahwa pihak tersebut memang berhak atas Hak Cipta atau Hak Terkait, dan hak Pemohon tersebut memang sedang dilanggar.

Pasal 68

Dalam hal penetapan sementara pengadilan tersebut telah dilakukan, para pihak harus segera diberitahukan mengenai hal itu, termasuk hak untuk didengar bagi pihak yang dikenai penetapan sementara tersebut.

Pasal 69

(1) Dalam hal hakim Pengadilan Niaga telah menerbitkan penetapan sementara pengadilan, hakim Pengadilan Niaga harus memutuskan apakah mengubah, membatalkan, atau menguatkan penetapan sebagaimana dimaksud dalam Pasal 67 huruf a dan huruf b dalam waktu paling lama 30 (tiga puluh) hari sejak dikeluarkannya penetapan sementara pengadilan tersebut.

(2) Apabila dalam jangka waktu 30 (tiga puluh) hari hakim tidak melaksanakan ketentuan sebagaimana dimaksud pada ayat (1), penetapan sementara pengadilan tidak mempunyai kekuatan hukum.

Pasal 70

Dalam hal penetapan sementara dibatalkan, pihak yang merasa dirugikan dapat menuntut ganti rugi kepada pihak yang meminta penetapan sementara atas segala kerugian yang ditimbulkan oleh penetapan sementara tersebut.

BAB XII
PENYIDIKAN

Pasal 71

(1) Selain Penyidik Pejabat Polisi Negara Republik Indonesia, Pejabat Pegawai Negeri Sipil tertentu di lingkungan departemen yang lingkup tugas dan tanggung jawabnya meliputi pembinaan Hak Kekayaan Intelektual diberi wewenang khusus sebagai Penyidik sebagaimana dimaksud dalam Undang-undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana untuk melakukan penyidikan tindak pidana di bidang Hak Cipta.

(2) Penyidik sebagaimana dimaksud pada ayat (1) berwenang:
   a. melakukan pemeriksaan atas kebenaran laporan atau keterangan berkenaan dengan tindak pidana di bidang Hak Cipta;
   b. melakukan pemeriksaan terhadap pihak atau badan hukum yang diduga melakukan tindak pidana di bidang Hak Cipta;
   c. meminta keterangan dari pihak atau badan hukum sehubungan dengan tindak pidana di bidang Hak Cipta;
   d. melakukan pemeriksaan atas pembukuan, pencatatan, dan dokumen lain berkenaan dengan tindak pidana di bidang Hak Cipta;
   e. melakukan pemeriksaan di tempat tertentu yang diduga terdapat barang bukti pembukuan, pencatatan, dan dokumen lain;
   f. melakukan penyitaan bersama-sama dengan pihak Kepolisian terhadap bahan dan barang hasil pelanggaran yang dapat dijadikan bukti dalam perkara tindak pidana di bidang Hak Cipta; dan
   g. meminta bantuan ahli dalam rangka pelaksanaan tugas penyidikan tindak pidana di bidang Hak Cipta.

(3) Penyidik sebagaimana dimaksud pada ayat (1) memberitahukan dimulainya penyidikan dan menyampaikan hasil penyidikannya kepada penyidik pejabat polisi negara Republik Indonesia sesuai dengan ketentuan yang diatur dalam Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

BAB XIII
KETENTUAN PIDANA

Pasal 72

(1) Barangsiapa dengan sengaja dan tanpa hak melakukan perbuatan sebagaimana dimaksud dalam Pasal 2 ayat (1) atau Pasal 49 ayat (1) dan ayat (2) dipidana dengan pidana penjara masing-masing paling singkat 1 (satu) bulan dan/atau denda paling sedikit Rp 1.000.000,00 (satu juta rupiah), atau pidana penjara paling lama 7 (tujuh) tahun dan/atau denda paling banyak Rp 5.000.000.000,00 (lima miliar rupiah).

(2) Barangsiapa dengan sengaja menyiarkan, memamerkan, mengedarkan, atau menjual kepada umum suatu Ciptaan atau barang hasil pelanggaran Hak Cipta atau Hak Terkait sebagaimana dimaksud pada ayat (1) dipidana dengan pidana penjara paling lama 5 (lima) tahun dan/atau denda paling banyak Rp 500.000.000,00 (lima ratus juta rupiah).

(3) Barangsiapa dengan sengaja dan tanpa hak memperbanyak penggunaan untuk kepentingan komersial suatu Program Komputer dipidana dengan pidana penjara paling lama 5 (lima) tahun dan/atau denda paling banyak Rp 500.000.000,00 (lima ratus juta rupiah).

(4) Barangsiapa dengan sengaja melanggar Pasal 17 dipidana dengan pidana penjara paling lama 5 (lima) tahun dan/atau denda paling banyak Rp 1.000.000.000,00 (satu miliar rupiah).

(5) Barangsiapa dengan sengaja melanggar Pasal 19, Pasal 20, atau Pasal 49 ayat (3) dipidana dengan pidana penjara paling lama 2 (dua) tahun dan/atau denda paling banyak Rp 150.000.000,00 (seratus lima puluh juta rupiah).

(6) Barangsiapa dengan sengaja dan tanpa hak melanggar Pasal 24 atau Pasal 55 dipidana dengan pidana penjara paling lama 2 (dua) tahun dan/atau denda paling banyak Rp 150.000.000,00 (seratus lima puluh juta rupiah).

(7) Barangsiapa dengan sengaja dan tanpa hak melanggar Pasal 25 dipidana dengan pidana penjara paling lama 2 (dua) tahun dan/atau denda paling banyak Rp 150.000.000,00 (seratus lima puluh juta rupiah).

(8) Barangsiapa dengan sengaja dan tanpa hak melanggar Pasal 27 dipidana dengan pidana penjara paling lama 2 (dua) tahun dan/atau denda paling banyak Rp 150.000.000,00 (seratus lima puluh juta rupiah).

(9) Barangsiapa dengan sengaja melanggar Pasal 28 dipidana dengan pidana penjara paling lama 5 (lima) tahun dan/atau denda paling banyak Rp 1.500.000.000,00 (satu miliar lima ratus juta rupiah).

Pasal 73

(1) Ciptaan atau barang yang merupakan hasil tindak pidana Hak Cipta atau Hak Terkait serta alat-alat yang digunakan untuk melakukan tindak pidana tersebut dirampas oleh Negara untuk dimusnahkan.

(2) Ciptaan sebagaimana dimaksud pada ayat (1) di bidang seni dan bersifat unik, dapat dipertimbangkan untuk tidak dimusnahkan.

BAB XIV
KETENTUAN PERALIHAN

Pasal 74

Dengan berlakunya Undang-undang ini segala peraturan perundang-undangan di bidang Hak Cipta yang telah ada pada tanggal berlakunya Undang-undang ini, tetap berlaku selama tidak bertentangan atau belum diganti dengan yang baru berdasarkan Undang-undang ini.

Pasal 75

Terhadap Surat Pendaftaran Ciptaan yang telah dikeluarkan oleh Direktorat Jenderal berdasarkan Undang-undang No. 6 Tahun 1982 tentang Hak Cipta sebagaimana diubah dengan Undang-undang No.7 Tahun 1987 dan terakhir diubah dengan Undang-undang No.12 Tahun 1997 yang masih berlaku pada saat diundangkannya undang-undang ini, dinyatakan tetap berlaku untuk selama sisa jangka waktu perlindungannya.

BAB XV
KETENTUAN PENUTUP

Pasal 76

Undang-undang ini berlaku terhadap:

a. semua Ciptaan warga negara, penduduk, dan badan hukum Indonesia;
b. semua Ciptaan bukan warga negara Indonesia, bukan penduduk Indonesia, dan bukan badan hukum Indonesia yang diumumkan untuk pertama kali di Indonesia;
c. semua Ciptaan bukan warga negara Indonesia, bukan penduduk Indonesia, dan bukan badan hukum Indonesia, dengan ketentuan:
   (i) negaranya mempunyai perjanjian bilateral mengenai perlindungan Hak Cipta dengan Negara Republik Indonesia; atau
   (ii) negaranya dan Negara Republik Indonesia merupakan pihak atau peserta dalam perjanjian multilateral yang sama mengenai perlindungan Hak Cipta.

Pasal 77

Dengan berlakunya undang-undang ini, Undang-undang Nomor 6 Tahun 1982 tentang Hak Cipta sebagaimana diubah dengan Undang-undang Nomor 7 Tahun 1987 dan terakhir diubah dengan Undang-undang Nomor 12 Tahun 1997 dinyatakan tidak berlaku.

Pasal 78

Undang-undang ini mulai berlaku 12 (dua belas) bulan sejak tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Undang-undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Disahkan di Jakarta
pada tanggal 29 Juli 2002

PRESIDEN REPUBLIK INDONESIA

ttd.

MEGAWATI SOEKARNOPUTRI

Diundangkan di Jakarta
pada tanggal 29 Juli 2002

SEKRETARIS NEGARA
REPUBLIK INDONESIA

ttd.

BAMBANG KESOWO

LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 2002 NOMOR 85

Salinan sesuai dengan aslinya
SEKRETARIAT KABINET RI.
Kepala Biro Peraturan Perundang-undangan II,

Ttd.

EDY SUDIBYO

PENJELASAN
ATAS
UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 19 TAHUN 2002
TENTANG
HAK CIPTA

I. UMUM

Indonesia sebagai negara kepulauan memiliki keanekaragaman seni dan budaya yang sangat kaya. Hal itu sejalan dengan keanekaragaman etnik, suku bangsa, dan agama yang secara keseluruhan merupakan potensi nasional yang perlu dilindungi. Kekayaan seni dan budaya itu merupakan salah satu sumber dari karya intelektual yang dapat dan perlu dilindungi oleh undang-undang. Kekayaan itu tidak semata-mata untuk seni dan budaya itu sendiri, tetapi dapat dimanfaatkan untuk meningkatkan kemampuan di bidang perdagangan dan industri yang melibatkan para Penciptanya. Dengan demikian, kekayaan seni dan budaya yang dilindungi itu dapat meningkatkan kesejahteraan tidak hanya bagi para Penciptanya saja, tetapi juga bagi bangsa dan negara.

Indonesia telah ikut serta dalam pergaulan masyarakat dunia dengan menjadi anggota dalam *Agreement Establishing the World Trade Organization* (Persetujuan Pembentukan Organisasi Perdagangan Dunia) yang mencakup pula *Agreement on Trade Related Aspects of Intellectual Property Rights* (Persetujuan tentang Aspek-aspek Dagang Hak Kekayaan Intelektual), selanjutnya disebut TRIPs, melalui Undang-undang Nomor 7 Tahun 1994. Selain itu, Indonesia juga meratifikasi *Berne Convention for the Protection of Artistic and Literary Works* (Konvensi Berne tentang Perlindungan Karya Seni dan Sastra) melalui Keputusan Presiden Nomor 18 Tahun 1997 dan *World Intellectual Property Organization Copyrights Treaty* (Perjanjian Hak Cipta WIPO), selanjutnya disebut WCT, melalui Keputusan Presiden Nomor 19 Tahun 1997.

Saat ini Indonesia telah memiliki Undang-undang Nomor 6 Tahun 1982 tentang Hak Cipta sebagaimana telah diubah dengan Undang-undang Nomor 7 Tahun 1987 dan terakhir diubah dengan Undang-undang Nomor 12 Tahun 1997 yang selanjutnya disebut Undang-undang Hak Cipta. Walaupun perubahan itu telah memuat beberapa penyesuaian pasal yang sesuai dengan TRIPs, namun masih terdapat beberapa hal yang perlu disempurnakan untuk memberi perlindungan bagi karya-karya intelektual di bidang Hak Cipta, termasuk upaya untuk memajukan perkembangan karya intelektual yang berasal dari keanekaragaman seni dan budaya tersebut di atas. Dari beberapa konvensi di bidang Hak Kekayaan Intelektual yang disebut di atas, masih terdapat beberapa ketentuan yang sudah sepatutnya dimanfaatkan. Selain itu, kita perlu menegaskan dan memilah kedudukan Hak Cipta di satu pihak dan Hak Terkait di lain pihak dalam rangka memberikan perlindungan bagi karya intelektual yang bersangkutan secara lebih jelas.

Dengan memperhatikan hal-hal di atas dipandang perlu untuk mengganti Undang-undang Hak Cipta dengan yang baru. Hal itu disadari karena kekayaan seni dan budaya, serta pengembangan kemampuan intelektual masyarakat Indonesia memerlukan perlindungan hukum yang memadai agar terdapat iklim persaingan usaha yang sehat yang diperlukan dalam melaksanakan pembangunan nasional.

Hak Cipta terdiri atas hak ekonomi *(economic rights)* dan hak moral *(moral rights)*. Hak ekonomi adalah hak untuk mendapatkan manfaat ekonomi atas Ciptaan serta produk Hak Terkait. Hak moral adalah hak yang melekat pada diri Pencipta atau Pelaku yang tidak dapat dihilangkan atau dihapus tanpa alasan apa pun, walaupun Hak Cipta atau Hak Terkait telah dialihkan.

Perlindungan Hak Cipta tidak diberikan kepada ide atau gagasan karena karya cipta harus memiliki bentuk yang khas, bersifat pribadi dan menunjukkan keaslian sebagai Ciptaan yang lahir berdasarkan kemampuan, kreativitas, atau keahlian sehingga Ciptaan itu dapat dilihat, dibaca, atau didengar.

Undang-undang ini memuat beberapa ketentuan baru, antara lain, mengenai:

1. *database* merupakan salah satu Ciptaan yang dilindungi;
2. penggunaan alat apa pun baik melalui kabel maupun tanpa kabel, termasuk media internet, untuk pemutaran produk-produk cakram optik *(optical disc)* melalui media audio, media audiovisual dan/atau sarana telekomunikasi;
3. penyelesaian sengketa oleh Pengadilan Niaga, arbitrase, atau alternatif penyelesaian sengketa;
4. penetapan sementara pengadilan untuk mencegah kerugian lebih besar bagi pemegang hak;
5. batas waktu proses perkara perdata di bidang Hak Cipta dan Hak Terkait, baik di Pengadilan Niaga maupun di Mahkamah Agung;
6. pencantuman hak informasi manajemen elektronik dan sarana kontrol teknologi;
7. pencantuman mekanisme pengawasan dan perlindungan terhadap produk-produk yang menggunakan sarana produksi berteknologi tinggi;
8. ancaman pidana atas pelanggaran Hak Terkait;
9. ancaman pidana dan denda minimal;
10. ancaman pidana terhadap perbanyakan penggunaan Program Komputer untuk kepentingan komersial secara tidak sah dan melawan hukum.

II. PASAL DEMI PASAL

Pasal 1

Cukup jelas.

Pasal 2

Ayat (1)

Yang dimaksud dengan hak eksklusif adalah hak yang semata-mata diperuntukkan bagi pemegangnya sehingga tidak ada pihak lain yang boleh memanfaatkan hak tersebut tanpa izin pemegangnya.

Dalam pengertian "mengumumkan atau memperbanyak", termasuk kegiatan menerjemahkan, mengadaptasi, mengaransemen, mengalihwujudkan, menjual, menyewakan, meminjamkan, mengimpor, memamerkan, mempertunjukkan kepada publik, menyiarkan, merekam, dan mengomunikasikan Ciptaan kepada publik melalui sarana apa pun.

Ayat (2)

Cukup jelas.

Pasal 3

Ayat (1)

Cukup jelas.

Ayat (2)

Beralih atau dialihkannya Hak Cipta tidak dapat dilakukan secara lisan, tetapi harus dilakukan secara tertulis baik dengan maupun tanpa akta notariil.

Huruf a

Cukup jelas.

Huruf b

Cukup jelas.

Huruf c

Cukup jelas.

Huruf d

Cukup jelas.

Huruf e

Sebab-sebab lain yang dibenarkan oleh peraturan perundang-undangan, misalnya pengalihan yang disebabkan oleh putusan pengadilan yang telah memperoleh kekuatan hukum tetap.

Pasal 4

Ayat (1)

Karena manunggal dengan Penciptanya dan bersifat tidak berwujud, Hak Cipta pada prinsipnya tidak dapat disita, kecuali Hak Cipta tersebut diperoleh secara melawan hukum.

Ayat (2)

Cukup jelas.

Pasal 5

Ayat (1)

Cukup jelas.

Ayat (2)

Pada prinsipnya Hak Cipta diperoleh bukan karena pendaftaran, tetapi dalam hal terjadi sengketa di pengadilan mengenai Ciptaan yang terdaftar dan yang tidak terdaftar sebagaimana dimaksud pada ketentuan ayat (1) huruf a dan huruf b serta apabila pihak-pihak yang berkepentingan dapat membuktikan kebenarannya, hakim dapat menentukan Pencipta yang sebenarnya berdasarkan pembuktian tersebut.

Pasal 6

Yang dimaksud dengan bagian tersendiri, misalnya suatu ciptaan berupa film serial, yang isi setiap seri dapat lepas dari isi seri yang lain, demikian juga dengan buku, yang untuk isi setiap bagian dapat dipisahkan dari isi bagian yang lain.

Pasal 7

Rancangan yang dimaksud adalah gagasan berupa gambar atau kata atau gabungan keduanya, yang akan diwujudkan dalam bentuk yang dikehendaki pemilik rancangan. Oleh karena itu, perancang disebut Pencipta, apabila rancangannya itu dikerjakan secara detail menurut desain yang sudah ditentukannya dan tidak sekadar gagasan atau ide saja. Yang dimaksud dengan di bawah pimpinan dan pengawasan adalah yang dilakukan dengan bimbingan, pengarahan, ataupun koreksi dari orang yang memiliki rancangan tersebut.

Pasal 8

Ayat (1)

Yang dimaksud dengan hubungan dinas adalah hubungan kepegawaian antara pegawai negeri dengan instansinya.

Ayat (2)

Ketentuan ini dimaksudkan untuk menegaskan bahwa Hak Cipta yang dibuat oleh seseorang berdasarkan pesanan dari instansi Pemerintah tetap dipegang oleh instansi Pemerintah tersebut selaku pemesan, kecuali diperjanjikan lain.

Ayat (3)

Yang dimaksud dengan hubungan kerja atau berdasarkan pesanan di sini adalah Ciptaan yang dibuat atas dasar hubungan kerja di lembaga swasta atau atas dasar pesanan pihak lain.

Pasal 9

Cukup jelas.

Pasal 10

Ayat (1)

Cukup jelas.

Ayat (2)

Dalam rangka melindungi *folklor* dan hasil kebudayaan rakyat lain, Pemerintah dapat mencegah adanya monopoli atau komersialisasi serta tindakan yang merusak atau pemanfaatan komersial tanpa seizin negara Republik Indonesia sebagai Pemegang Hak Cipta. Ketentuan ini dimaksudkan untuk menghindari tindakan pihak asing yang dapat merusak nilai kebudayaan tersebut.

Folklor dimaksudkan sebagai sekumpulan ciptaan tradisional, baik yang dibuat oleh kelompok maupun perorangan dalam masyarakat, yang menunjukkan identitas sosial dan budayanya berdasarkan standar dan nilai-nilai yang diucapkan atau diikuti secara turun temurun, termasuk:

a. cerita rakyat, puisi rakyat;
b. lagu-lagu rakyat dan musik instrumen tradisional;
c. tari-tarian rakyat, permainan tradisional;
d. hasil seni antara lain berupa: lukisan, gambar, ukiran-ukiran, pahatan, mosaik, perhiasan, kerajinan tangan, pakaian, instrumen musik dan tenun tradisional.

Ayat (3)

Cukup jelas.

Ayat (4)

Cukup jelas.

Pasal 11

Ayat (1)

Ketentuan ini dimaksudkan untuk menegaskan status Hak Cipta dalam hal suatu karya yang Penciptanya tidak diketahui dan tidak atau belum diterbitkan, sebagaimana layaknya Ciptaan itu diwujudkan. Misalnya, dalam hal karya tulis atau karya musik, Ciptaan tersebut belum diterbitkan dalam bentuk buku atau belum direkam. Dalam hal demikian, Hak Cipta atas karya tersebut dipegang oleh Negara untuk melindungi Hak Cipta bagi kepentingan Penciptanya, sedangkan apabila karya tersebut berupa karya tulis dan telah diterbitkan, Hak Cipta atas Ciptaan yang bersangkutan dipegang oleh Penerbit.

Ayat (2)

Penerbit dianggap Pemegang Hak Cipta atas Ciptaan yang diterbitkan dengan menggunakan nama samaran Penciptanya. Dengan demikian, suatu Ciptaan yang diterbitkan tetapi tidak diketahui siapa Penciptanya atau terhadap Ciptaan yang hanya tertera nama samaran Penciptanya, penerbit yang namanya tertera di dalam Ciptaan dan dapat membuktikan sebagai Penerbit yang pertama kali menerbitkan Ciptaan tersebut dianggap sebagai Pemegang Hak Cipta. Hal ini tidak berlaku apabila Pencipta di kemudian hari menyatakan identitasnya dan ia dapat membuktikan bahwa Ciptaan tersebut adalah Ciptaannya.

Ayat (3)

Penerbit dianggap Pemegang Hak Cipta atas Ciptaan yang telah diterbitkan tetapi tidak diketahui Penciptanya atau pada Ciptaan tersebut hanya tertera nama samaran Penciptanya, penerbit yang pertama kali menerbitkan Ciptaan tersebut dianggap mewakili Pencipta. Hal ini tidak berlaku apabila Pencipta dikemudian hari menyatakan identitasnya dan ia dapat membuktikan bahwa Ciptaan tersebut adalah Ciptaannya.

Pasal 12

Ayat (1)

Huruf a

Yang dimaksud dengan perwajahan karya tulis adalah karya cipta yang lazim dikenal dengan "*typholographical arrangement*", yaitu aspek seni pada susunan dan bentuk penulisan karya tulis. Hal ini mencakup antara lain format, hiasan, warna dan susunan atau tata letak huruf indah yang secara keseluruhan menampilkan wujud yang khas.

Huruf b

Yang dimaksud dengan Ciptaan lain yang sejenis adalah Ciptaan-ciptaan yang belum disebutkan, tetapi dapat disamakan dengan Ciptaan-ciptaan seperti ceramah, kuliah, dan pidato.

Huruf c

Yang dimaksud dengan alat peraga adalah Ciptaan yang berbentuk dua ataupun tiga dimensi yang berkaitan dengan geografi, topografi, arsitektur, biologi atau ilmu pengetahuan lain.

Huruf d

Lagu atau musik dalam undang-undang ini diartikan sebagai karya yang bersifat utuh, sekalipun terdiri atas unsur lagu atau melodi, syair atau lirik, dan aransemennya termasuk notasi.

Yang dimaksud dengan utuh adalah bahwa lagu atau musik tersebut merupakan satu kesatuan karya cipta.

Huruf e

Cukup jelas.

Huruf f

Yang dimaksud dengan gambar antara lain meliputi: motif, diagram, sketsa, logo dan bentuk huruf indah, dan gambar tersebut dibuat bukan untuk tujuan desain industri.

Yang dimaksud dengan kolase adalah komposisi artistik yang dibuat dari berbagai bahan (misalnya dari kain, kertas, kayu) yang ditempelkan pada permukaan gambar.

Seni terapan yang berupa kerajinan tangan sejauh tujuan pembuatannya bukan untuk diproduksi secara massal merupakan suatu Ciptaan.

Huruf g

Yang dimaksud dengan arsitektur antara lain meliputi: seni gambar bangunan, seni gambar miniatur, dan seni gambar maket bangunan.

Huruf h

Yang dimaksud dengan peta adalah suatu gambaran dari unsur-unsur alam dan/atau buatan manusia yang berada di atas ataupun di bawah permukaan bumi yang digambarkan pada suatu bidang datar dengan skala tertentu.

Huruf i

Batik yang dibuat secara konvensional dilindungi dalam undang-undang ini sebagai bentuk Ciptaan tersendiri. Karya-karya seperti itu memperoleh perlindungan karena mempunyai nilai seni, baik pada Ciptaan motif atau

gambar maupun komposisi warnanya. Disamakan dengan pengertian seni batik adalah karya tradisional lainnya yang merupakan kekayaan bangsa Indonesia yang terdapat di berbagai daerah, seperti seni songket, ikat, dan lain-lain yang dewasa ini terus dikembangkan.

Huruf j

Cukup jelas.

Huruf k

Karya sinematografi yang merupakan media komunikasi massa gambar gerak (*moving images*) antara lain meliputi: film dokumenter, film iklan, reportase atau film cerita yang dibuat dengan skenario, dan film kartun. Karya sinematografi dapat dibuat dalam pita seluloid, pita video, piringan video, cakram optik dan/atau media lain yang memungkinkan untuk dipertunjukkan di bioskop, di layar lebar atau ditayangkan di televisi atau di media lainnya. Karya serupa itu dibuat oleh perusahaan pembuat film, stasiun televisi atau perorangan.

Huruf l

Yang dimaksud dengan bunga rampai meliputi: Ciptaan dalam bentuk buku yang berisi kumpulan karya tulis pilihan, himpunan lagu-lagu pilihan yang direkam dalam satu kaset, cakram optik atau media lain, serta komposisi berbagai karya tari pilihan.

Yang dimaksud dengan *database* adalah kompilasi data dalam bentuk apapun yang dapat dibaca oleh mesin (komputer) atau dalam bentuk lain, yang karena alasan pemilihan atau pengaturan atas isi data itu merupakan kreasi intelektual. Perlindungan terhadap *database* diberikan dengan tidak mengurangi hak Pencipta lain yang Ciptaannya dimasukkan dalam *database* tersebut.

Yang dimaksud dengan pengalihwujudan adalah pengubahan bentuk, misalnya dari bentuk patung menjadi lukisan, cerita roman menjadi drama, drama menjadi sandiwara radio dan novel menjadi film.

Ayat (2)

Cukup jelas.

Ayat (3)

Ciptaan yang belum diumumkan, sebagai contoh sketsa, manuskrip, cetak biru *(blue print)* dan yang sejenisnya dianggap Ciptaan yang sudah merupakan suatu kesatuan yang lengkap.

Pasal 13

Huruf a

Cukup jelas.

Huruf b

Cukup jelas.

Huruf c

Cukup jelas.

Huruf d

Cukup jelas.

Huruf e

Yang dimaksud dengan keputusan badan-badan sejenis lain, misalnya keputusan-keputusan yang memutuskan suatu sengketa, termasuk keputusan-keputusan Panitia Penyelesaian Perselisihan Perburuhan, dan Mahkamah Pelayaran.

Pasal 14

Huruf a

Cukup jelas.

Huruf b

Contoh dari Pengumuman dan Perbanyakan atas nama Pemerintah adalah Pengumuman dan Perbanyakan mengenai suatu hasil riset yang dilakukan dengan biaya Negara.

Huruf c

Yang dimaksud dengan berita aktual adalah berita yang diumumkan dalam waktu 1 x 24 jam sejak pertama kali diumumkan.

Pasal 15

Huruf a

Pembatasan ini perlu dilakukan karena ukuran kuantitatif untuk menentukan pelanggaran Hak Cipta sulit diterapkan. Dalam hal ini akan lebih tepat apabila penentuan pelanggaran Hak Cipta didasarkan pada ukuran kualitatif. Misalnya, pengambilan bagian yang paling substansial dan khas yang menjadi ciri dari Ciptaan, meskipun pemakaian itu kurang dari 10 %. Pemakaian seperti itu secara substantif merupakan pelanggaran Hak Cipta. Pemakaian Ciptaan tidak dianggap sebagai pelanggaran Hak Cipta apabila sumbernya disebut atau dicantumkan dengan jelas dan hal itu dilakukan terbatas untuk kegiatan yang bersifat nonkomersial termasuk untuk kegiatan sosial. Misalnya, kegiatan dalam lingkup pendidikan dan ilmu pengetahuan, kegiatan penelitian dan pengembangan, dengan ketentuan tidak merugikan kepentingan yang wajar dari Penciptanya. Termasuk dalam pengertian ini adalah pengambilan Ciptaan untuk pertunjukan atau pementasan yang tidak dikenakan bayaran. Khusus untuk pengutipan karya tulis, penyebutan atau pencantuman sumber Ciptaan yang dikutip harus dilakukan secara lengkap. Artinya, dengan mencantumkan sekurang-kurangnya nama Pencipta, judul atau nama Ciptaan, dan nama penerbit jika ada.

Yang dimaksud dengan kepentingan yang wajar dari Pencipta atau Pemegang Hak Cipta adalah suatu kepentingan yang didasarkan pada keseimbangan dalam menikmati manfaat ekonomi atas suatu ciptaan.

Huruf b

Cukup jelas.

Huruf c

Cukup jelas.

Huruf d

Cukup jelas.

Huruf e

Cukup jelas.

Huruf f

Cukup jelas.

Huruf g

Seorang pemilik (bukan Pemegang Hak Cipta) Program Komputer dibolehkan membuat salinan atas Program Komputer yang dimilikinya, untuk dijadikan cadangan semata-mata untuk digunakan sendiri. Pembuatan salinan cadangan seperti di atas tidak dianggap sebagai pelanggaran Hak Cipta.

Pasal 16

Cukup jelas.

Pasal 17

Ketentuan ini dimaksudkan untuk mencegah beredarnya Ciptaan yang apabila diumumkan dapat merendahkan nilai-nilai keagamaan, ataupun menimbulkan masalah kesukuan atau ras, dapat menimbulkan gangguan atau bahaya terhadap pertahanan keamanan negara, bertentangan dengan norma kesusilaan umum yang berlaku dalam masyarakat, dan ketertiban umum. Misalnya, buku-buku atau karya-karya sastra atau karya-karya fotografi.

Pasal 18

Ayat (1)

Maksud ketentuan ini adalah Pengumuman suatu ciptaan melalui penyiaran radio, televisi dan sarana lainnya yang diselenggarakan oleh Pemerintah haruslah diutamakan untuk kepentingan publik yang secara nyata dibutuhkan oleh masyarakat umum.

Ayat (2)

Cukup jelas.

Pasal 19

Ayat (1)

Tidak selalu orang yang dipotret akan setuju bahwa potretnya diumumkan tanpa diminta persetujuannya. Oleh karena itu ditentukan bahwa harus dimintakan persetujuan yang bersangkutan atau ahli warisnya.

Ayat (2)

Cukup jelas.

Ayat (3)

Cukup jelas.

Pasal 20

Dalam suatu pemotretan dapat terjadi bahwa seseorang telah dipotret tanpa diketahuinya dalam keadaan yang dapat merugikan dirinya.

Pasal 21

Misalnya, seorang penyanyi dalam suatu pertunjukan musik dapat berkeberatan jika diambil potretnya untuk diumumkan.

Pasal 22

Cukup jelas.

Pasal 23

Cukup jelas.

Pasal 24

Ayat (1)

Cukup jelas.

Ayat (2)

Dengan hak moral, Pencipta dari suatu karya cipta memiliki hak untuk:

a. dicantumkan nama atau nama samarannya di dalam Ciptaannya ataupun salinannya dalam hubungan dengan penggunaan secara umum;
b. mencegah bentuk-bentuk distorsi, mutilasi atau bentuk perubahan lainnya yang meliputi pemutarbalikan, pemotongan, perusakan, penggantian yang berhubungan dengan karya cipta yang pada akhirnya akan merusak apresiasi dan reputasi Pencipta.

Selain itu tidak satupun dari hak-hak tersebut di atas dapat dipindahkan selama Penciptanya masih hidup, kecuali atas wasiat Pencipta berdasarkan peraturan perundang-undangan.

Ayat (3)

Cukup jelas.

Ayat (4)

Cukup jelas.

Pasal 25

Yang dimaksud dengan informasi manajemen hak Pencipta adalah informasi yang melekat secara elektronik pada suatu ciptaan atau muncul dalam hubungan dengan kegiatan Pengumuman yang menerangkan tentang suatu Ciptaan, Pencipta, dan kepemilikan hak maupun informasi persyaratan penggunaan, nomor atau kode informasi. Siapa pun dilarang mendistribusikan, mengimpor, menyiarkan, mengkomunikasikan kepada publik karya-karya pertunjukan, rekaman suara atau siaran yang diketahui bahwa perangkat informasi manajemen hak Pencipta telah ditiadakan, dirusak, atau diubah tanpa izin pemegang hak.

Pasal 26

Ayat (1)

Pembelian hasil Ciptaan tidak berarti bahwa status Hak Ciptanya berpindah kepada pembeli, akan tetapi Hak Cipta atas suatu Ciptaan tersebut tetap ada di tangan Penciptanya. Misalnya, pembelian buku, kaset, dan lukisan.

Ayat (2)

Cukup jelas.

Ayat (3)

Cukup jelas.

Pasal 27

Yang dimaksud dengan sarana kontrol teknologi adalah instrumen teknologi dalam bentuk antara lain kode rahasia, *password, bar code, serial number,* teknologi dekripsi *(decryption)* dan enkripsi *(encryption)* yang digunakan untuk melindungi Ciptaan.

Semua tindakan yang dianggap pelanggaran hukum meliputi: memproduksi atau mengimpor atau menyewakan peralatan apa pun yang dirancang khusus untuk meniadakan sarana kontrol teknologi atau untuk mencegah, membatasi Perbanyakan dari suatu Ciptaan.

Pasal 28

Ayat (1)

Yang dimaksud dengan ketentuan persyaratan sarana produksi berteknologi tinggi, misalnya, izin lokasi produksi, kewajiban membuat pembukuan produksi, membubuhkan tanda pengenal produsen pada produknya, pajak atau cukai serta memenuhi syarat inspeksi oleh pihak yang berwenang.

Ayat (2)

Cukup jelas.

Pasal 29

Cukup jelas.

Pasal 30

Cukup jelas.

Pasal 31

Cukup jelas.

Pasal 32

Cukup jelas.

Pasal 33

Cukup jelas.

Pasal 34

Ketentuan ini menegaskan bahwa tanggal 1 Januari sebagai dasar perhitungan jangka waktu perlindungan Hak Cipta, dimaksudkan semata-mata untuk memudahkan perhitungan berakhirnya jangka perlindungan. Titik tolaknya adalah tanggal 1 Januari tahun berikutnya setelah Ciptaan tersebut diumumkan, diketahui oleh umum, diterbitkan atau Penciptanya meninggal dunia. Cara perhitungan seperti itu tetap tidak mengurangi prinsip perhitungan jangka waktu perlindungan yang didasarkan pada saat dihasilkannya suatu Ciptaan apabila tanggal tersebut diketahui secara jelas.

Pasal 35

Ayat (1)

Cukup jelas.

Ayat (2)

Cukup jelas.

Ayat (3)

Cukup jelas.

Ayat (4)

Pendaftaran Ciptaan bukan merupakan suatu keharusan bagi Pencipta atau Pemegang Hak Cipta, dan timbulnya perlindungan suatu Ciptaan dimulai sejak Ciptaan itu ada atau terwujud dan bukan karena pendaftaran. Hal ini berarti suatu Ciptaan baik yang terdaftar maupun tidak terdaftar tetap dilindungi.

Pasal 36

Direktorat Jenderal yang menyelenggarakan pendaftaran Ciptaan tidak bertanggung jawab atas isi, arti, maksud, atau bentuk dari Ciptaan yang terdaftar.

Pasal 37

Ayat (1)

Yang dimaksud dengan kuasa adalah Konsultan Hak Kekayaan Intelektual yaitu orang yang memiliki keahlian di bidang Hak Kekayaan Intelektual dan secara khusus memberikan jasa mengurus permohonan Hak Cipta, Paten, Merek, Desain Industri serta bidang-bidang Hak Kekayaan Intelektual lain dan terdaftar sebagai Konsultan Hak Kekayaan Intelektual di Direktorat Jenderal.

Ayat (2)

Yang dimaksud dengan pengganti Ciptaan adalah contoh Ciptaan yang dilampirkan karena Ciptaan itu sendiri secara teknis tidak mungkin untuk dilampirkan dalam Permohonan, misalnya, patung yang berukuran besar diganti dengan miniatur atau fotonya.

Ayat (3)

Jangka waktu proses permohonan dimaksudkan untuk memberi kepastian hukum kepada Pemohon.

Ayat (4)

Cukup jelas.

Ayat (5)

Cukup jelas.

Ayat (6)

Cukup jelas.

Pasal 38

Cukup jelas.

Pasal 39

Cukup jelas.

Pasal 40

Cukup jelas.

Pasal 41

Cukup jelas.

Pasal 42

Cukup jelas.

Pasal 43

Cukup jelas.

Pasal 44

Cukup jelas.

Pasal 45

Cukup jelas.

Pasal 46

Cukup jelas.

Pasal 47

Cukup jelas.

Pasal 48

Cukup jelas.

Pasal 49

Ayat (1)

Yang dimaksud dengan menyiarkan termasuk menyewakan, melakukan pertunjukan umum *(public performance),* mengomunikasikan pertunjukan langsung *(life performance),* dan mengomunikasikan secara interaktif suatu karya rekaman Pelaku.

Ayat (2)

Cukup jelas.

Ayat (3)

Cukup jelas.

Pasal 50

Cukup jelas.

Pasal 51

Cukup jelas.

Pasal 52

Cukup jelas.

Pasal 53

Cukup jelas.

Pasal 54

Ayat (1)

Cukup jelas.

Ayat (2)

Cukup jelas.

Ayat (3)

Yang dimaksud dengan menggunakan penerimaan adalah penggunaan Penerimaan Negara Bukan Pajak (PNBP) sesuai dengan sistem dan mekanisme yang berlaku. Dalam hal ini seluruh penerimaan disetorkan langsung ke kas negara sebagai PNBP. Kemudian, Direktorat Jenderal melalui Menteri mengajukan permohonan kepada Menteri Keuangan untuk menggunakan sebagian PNBP sesuai dengan keperluan yang dibenarkan oleh Undang-undang, yang saat ini diatur dengan Undang-undang Nomor 20 Tahun 1997 tentang Penerimaan Negara Bukan Pajak (Lembaran Negara Republik Indonesia Tahun 1997 Nomor 43, Tambahan Lembaran Negara Republik Indonesia Nomor 3687).

Pasal 55

Cukup jelas.

Pasal 56

Cukup jelas.

Pasal 57

Cukup jelas.

Pasal 58

Cukup jelas.

Pasal 59

Cukup jelas.

Pasal 60

Ayat (1)

Yang dimaksud dengan Ketua Pengadilan Niaga adalah Ketua Pengadilan Negeri/Pengadilan Niaga.

Ayat (2)

Cukup jelas.

Ayat (3)

Cukup jelas.

Ayat (4)

Cukup jelas.

Ayat (5)

Cukup jelas.

Pasal 61

Cukup jelas.

Pasal 62

Ayat (1)

Cukup jelas.

Ayat (2)

Cukup jelas.

Ayat (3)

Kecuali dinyatakan lain, yang dimaksud dengan "panitera" pada ayat ini adalah panitera Pengadilan Negeri/Pengadilan Niaga.

Pasal 63

Cukup jelas.

Pasal 64

Cukup jelas.

Pasal 65

Yang dimaksud dengan alternatif penyelesaian sengketa adalah negosiasi, mediasi, konsiliasi, dan cara lain yang dipilih oleh para pihak sesuai dengan Undang-undang yang berlaku.

Pasal 66

Cukup jelas.

Pasal 67

Huruf a

Ketentuan ini dimaksudkan untuk mencegah kerugian yang lebih besar pada pihak yang haknya dilanggar, sehingga hakim Pengadilan Niaga diberi kewenangan untuk menerbitkan penetapan sementara guna mencegah berlanjutnya pelanggaran dan masuknya barang yang diduga melanggar Hak Cipta dan Hak Terkait ke jalur perdagangan termasuk tindakan importasi.

Huruf b

Ketentuan ini dimaksudkan untuk mencegah penghilangan barang bukti oleh pihak pelanggar.

Huruf c

Cukup jelas.

Pasal 68

Cukup jelas.

Pasal 69

Cukup jelas.

Pasal 70

Cukup jelas.

Pasal 71

Ayat (1)

Yang dimaksud dengan Pejabat Pegawai Negeri Sipil tertentu adalah pegawai yang diangkat sebagai penyidik berdasarkan Keputusan Menteri.

Ayat (2)

Cukup jelas.

Ayat (3)

Cukup jelas.

Pasal 72

Ayat (1)

Cukup jelas.

Ayat (2)

Cukup jelas.

Ayat (3)

Yang dimaksud dengan memperbanyak penggunaan adalah menggandakan, atau menyalin program komputer dalam bentuk kode sumber *(source code)* atau program aplikasinya.

Yang dimaksud dengan kode sumber adalah sebuah arsip *(file)* program yang berisi pernyataan-pernyataan *(statements)* pemrograman, kode-kode instruksi/perintah, fungsi, prosedur dan objek yang dibuat oleh seorang pemrogram *(programmer)*.

Misalnya: A membeli program komputer dengan hak Lisensi untuk digunakan pada satu unit komputer, atau B mengadakan perjanjian Lisensi untuk pengunaan aplikasi program komputer pada 10 (sepuluh) unit komputer. Apabila A atau B menggandakan atau menyalin aplikasi program komputer di atas untuk lebih dari yang telah ditentukan atau diperjanjikan, tindakan itu merupakan pelanggaran, kecuali untuk arsip.

Ayat (4)

Cukup jelas.

Ayat (5)

Cukup jelas.

Ayat (6)

Cukup jelas.

Ayat (7)

Cukup jelas.

Ayat (8)

Cukup jelas.

Ayat (9)

Cukup jelas.

Pasal 73

Ayat (1)

Cukup jelas.

Ayat (2)

Yang dimaksud dengan "bersifat unik" adalah bersifat lain daripada yang lain, tidak ada persamaan dengan yang lain, atau yang bersifat khusus.

Pasal 74

Cukup jelas.

Pasal 75

Cukup jelas.

Pasal 76

Cukup jelas.

Pasal 77

Cukup jelas.

Pasal 78

Diberlakukan 12 (dua belas) bulan sejak tanggal diundangkan dimaksudkan agar undang-undang ini dapat disosialisasikan terutama kepada pihak-pihak yang terkait dengan Hak Cipta, misalnya, perguruan tinggi, asosiasi-asosiasi di bidang Hak Cipta, dan lain-lain.

TAMBAHAN LEMBARAN NEGARA REPUBLIK INDONESIA NOMOR 4220.

PERATURAN PEMERINTAH REPUBLIK INDONESIA
NOMOR 51 TAHUN 2007

TENTANG

INDIKASI-GEOGRAFIS

DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA,

Menimbang : bahwa untuk melaksanakan ketentuan Pasal 56 ayat (9) Undang-Undang Nomor 15 Tahun 2001 tentang Merek, perlu menetapkan Peraturan Pemerintah tentang Indikasi-Geografis;

Mengingat : 1. Pasal 5 ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;

2. Undang-Undang Nomor 15 Tahun 2001 tentang Merek (Lembaran Negara Republik Indonesia Tahun 2001 Nomor 110, Tambahan Lembaran Negara Republik Indonesia Nomor 4131);

MEMUTUSKAN:

Menetapkan : PERATURAN PEMERINTAH TENTANG INDIKASI-GEOGRAFIS.

BAB I
KETENTUAN UMUM

Pasal 1

Dalam Peraturan Pemerintah ini yang dimaksudkan dengan :

1. Indikasi-geografis adalah suatu tanda yang menunjukkan daerah asal suatu barang, yang karena faktor lingkungan geografis termasuk faktor alam, faktor manusia, atau kombinasi dari kedua faktor tersebut, memberikan ciri dan kualitas tertentu pada barang yang dihasilkan.
2. Permohonan adalah permintaan pendaftaran Indikasi-geografis yang diajukan secara tertulis kepada Direktorat Jenderal.
3. Pemohon adalah pihak yang mengajukan Permohonan.
4. Produsen adalah pihak yang menghasilkan barang.
5. Konsultan Hak Kekayaan Intelektual adalah orang yang memiliki keahlian di bidang hak kekayaan intelektual dan secara khusus memberikan jasa di bidang pengajuan dan pengurusan Permohonan Paten, Merek, Desain Industri serta bidang-bidang hak kekayaan intelektual lainnya, termasuk Indikasi-geografis dan terdaftar sebagai Konsultan Hak Kekayaan Intelektual di Direktorat Jenderal.
6. Kuasa adalah Konsultan Hak Kekayaan Intelektual.
7. Tanggal Penerimaan adalah tanggal penerimaan Permohonan yang telah memenuhi persyaratan administratif.
8. Hari adalah hari kerja.
9. Buku Persyaratan adalah suatu dokumen yang memuat informasi tentang kualitas dan karakteristik yang khas dari barang yang dapat digunakan untuk membedakan barang yang satu dengan barang lainnya yang memiliki kategori sama.
10. Pemakai Indikasi-geografis adalah Produsen yang menghasilkan barang sesuai dengan Buku Persyaratan terkait dan didaftar di Direktorat Jenderal.

11. Direktorat Jenderal adalah Direktorat Jenderal Hak Kekayaan Intelektual yang berada di bawah departemen yang dipimpin oleh Menteri.
12. Menteri adalah menteri yang membawahkan departemen yang salah satu lingkup tugas dan tanggung jawabnya meliputi bidang hak kekayaan intelektual, termasuk indikasi-geografis.

BAB II
LINGKUP INDIKASI-GEOGRAFIS

Bagian Pertama
Umum

Pasal 2

(1) Tanda sebagaimana dimaksud dalam Pasal 1 angka 1 merupakan nama tempat atau daerah maupun tanda tertentu lainnya yang menunjukkan asal tempat dihasilkannya barang yang dilindungi oleh Indikasi-geografis.
(2) Barang sebagaimana dimaksud pada ayat (1) dapat berupa hasil pertanian, produk olahan, hasil kerajinan tangan, atau barang lainnya sebagaimana dimaksud dalam Pasal 1 angka 1.
(3) Tanda sebagaimana dimaksud pada ayat (1) dilindungi sebagai Indikasi-geografis apabila telah terdaftar dalam Daftar Umum Indikasi-geografis di Direktorat Jenderal.
(4) Indikasi-geografis terdaftar tidak dapat berubah menjadi milik umum.
(5) Tanda sebagaimana dimaksud pada ayat (1) hanya dapat dipergunakan pada barang yang memenuhi persyaratan sebagaimana diatur dalam Buku Persyaratan.

Bagian Kedua
Indikasi-Geografis yang Tidak Dapat Didaftar

Pasal 3

Indikasi-geografis tidak dapat didaftar apabila tanda yang dimohonkan pendaftarannya :
a. bertentangan dengan peraturan perundang-undangan, moralitas agama, kesusilaan atau ketertiban umum;
b. menyesatkan atau memperdaya masyarakat mengenai: ciri, sifat, kualitas, asal sumber, proses pembuatan barang, dan/atau kegunaannya;
c. merupakan nama geografis setempat yang telah digunakan sebagai nama varietas tanaman, dan digunakan bagi varietas tanaman yang sejenis; atau
d. telah menjadi generik.

Bagian Ketiga
Jangka Waktu Perlindungan Indikasi-Geografis

Pasal 4

Indikasi-geografis dilindungi selama karakteristik khas dan kualitas yang menjadi dasar bagi diberikannya perlindungan atas Indikasi-geografis tersebut masih ada.

BAB III
SYARAT DAN TATA CARA PERMOHONAN

Pasal 5

(1) Permohonan diajukan secara tertulis dalam bahasa Indonesia oleh Pemohon atau melalui Kuasanya dengan mengisi formulir dalam rangkap 3 (tiga) kepada Direktorat Jenderal.

(2) Bentuk dan isi formulir Permohonan sebagaimana dimaksud pada ayat (1) ditetapkan oleh Direktorat Jenderal.

(3) Pemohon sebagaimana dimaksud pada ayat (1) terdiri atas:
   a. lembaga yang mewakili masyarakat di daerah yang memproduksi barang yang bersangkutan, terdiri atas:
      1. pihak yang mengusahakan barang hasil alam atau kekayaan alam;
      2. produsen barang hasil pertanian;
      3. pembuat barang hasil kerajinan tangan atau barang hasil industri; atau
      4. pedagang yang menjual barang tersebut;
   b. lembaga yang diberi kewenangan untuk itu; atau
   c. kelompok konsumen barang tersebut.

Pasal 6

(1) Permohonan sebagaimana dimaksud dalam Pasal 5 harus mencantumkan persyaratan administrasi sebagai berikut:
   a. tanggal, bulan, dan tahun;
   b. nama lengkap, kewarganegaraan, dan alamat Pemohon; dan
   c. nama lengkap dan alamat Kuasa, apabila Permohonan diajukan melalui Kuasa.

(2) Permohonan sebagaimana dimaksud pada ayat (1) harus dilampiri:
   a. surat kuasa khusus, apabila Permohonan diajukan melalui Kuasa; dan
   b. bukti pembayaran biaya.

(3) Permohonan sebagaimana dimaksud pada ayat (1) harus dilengkapi dengan Buku Persyaratan yang terdiri atas:
   a. nama Indikasi-geografis yang dimohonkan pendaftarannya;
   b. nama barang yang dilindungi oleh Indikasi-geografis;
   c. uraian mengenai karakteristik dan kualitas yang membedakan barang tertentu dengan barang lain yang memiliki kategori sama, dan menjelaskan tentang hubungannya dengan daerah tempat barang tersebut dihasilkan.
   d. uraian mengenai lingkungan geografis serta faktor alam dan faktor manusia yang merupakan satu kesatuan dalam memberikan pengaruh terhadap kualitas atau karakteristik dari barang yang dihasilkan;
   e. uraian tentang batas-batas daerah dan/atau peta wilayah yang dicakup oleh Indikasi-geografis;
   f. uraian mengenai sejarah dan tradisi yang berhubungan dengan pemakaian Indikasi-geografis untuk menandai barang yang dihasilkan di daerah tersebut, termasuk pengakuan dari masyarakat mengenai Indikasi-geografis tersebut;
   g. uraian yang menjelaskan tentang proses produksi, proses pengolahan, dan proses pembuatan yang digunakan sehingga memungkinkan setiap produsen di daerah tersebut untuk memproduksi, mengolah, atau membuat barang terkait;
   h. uraian mengenai metode yang digunakan untuk menguji kualitas barang yang dihasilkan; dan
   i. label yang digunakan pada barang dan memuat Indikasi-geografis.

(4) Uraian tentang batas-batas daerah dan/atau peta wilayah yang dicakup oleh Indikasi-geografis sebagaimana dimaksud pada ayat (3) huruf e harus mendapat rekomendasi dari instansi yang berwenang.

BAB IV
TATA CARA PEMERIKSAAN

Bagian Pertama
Pemeriksaan Administratif

Pasal 7

(1) Direktorat Jenderal melakukan pemeriksaan administratif atas kelengkapan persyaratan Permohonan sebagaimana dimaksud dalam Pasal 5 dan Pasal 6 dalam waktu paling lama 14 (empat belas) hari terhitung sejak tanggal diterimanya Permohonan.

(2) Dalam hal Permohonan telah memenuhi persyaratan sebagaimana dimaksud dalam Pasal 5, Pasal 6 ayat (1), Pasal 6 ayat (2) huruf b, dan Pasal 6 ayat (3), Direktorat Jenderal memberikan Tanggal Penerimaan.

(3) Dalam hal terdapat kekuranglengkapan persyaratan sebagaimana dimaksud pada ayat (2) Direktorat Jenderal memberitahukan secara tertulis kepada Pemohon atau Kuasanya agar kelengkapan persyaratan tersebut dipenuhi dalam waktu paling lama 3 (tiga) bulan terhitung sejak tanggal penerimaan surat pemberitahuan.

(4) Dalam hal kelengkapan persyaratan tidak dipenuhi dalam jangka waktu sebagaimana dimaksud pada ayat (3), Direktorat Jenderal memberitahukan secara tertulis kepada Pemohon atau melalui Kuasanya bahwa Permohonan dianggap ditarik kembali dan mengumumkannya dalam Berita Resmi Indikasi-geografis.

(5) Dalam hal Permohonan dianggap ditarik kembali sebagaimana dimaksud pada ayat (4), biaya yang telah dibayarkan kepada Direktorat Jenderal tidak dapat ditarik kembali.

Bagian Kedua
Pemeriksaan Substantif

Pasal 8

(1) Dalam waktu paling lama 1 (satu) bulan terhitung sejak tanggal dipenuhinya kelengkapan persyaratan sebagaimana dimaksud dalam Pasal 7 ayat (2), Direktorat Jenderal akan meneruskan Permohonan kepada Tim Ahli Indikasi-geografis.

(2) Tim Ahli Indikasi-geografis melakukan pemeriksaan substantif terhadap Permohonan dalam jangka waktu paling lama 2 (dua) tahun terhitung sejak tanggal diterimanya Permohonan sebagaimana dimaksud pada ayat (1).

(3) Pemeriksaan substantif sebagaimana dimaksud pada ayat (2) dilaksanakan berdasarkan ketentuan dalam Pasal 1 angka 1, Pasal 3, dan Pasal 6 ayat (3).

(4) Dalam hal Tim Ahli Indikasi-geografis mempertimbangkan bahwa Permohonan telah memenuhi ketentuan pendaftaran sebagaimana dimaksud pada ayat (3), Tim Ahli Indikasi-geografis menyampaikan usulan kepada Direktorat Jenderal agar Indikasi-geografis didaftarkan di Daftar Umum Indikasi-geografis.

(5) Pemeriksaan substantif sebagaimana dimaksud pada ayat (2) dikenakan biaya.

(6) Biaya pemeriksaan substantif sebagaimana dimaksud pada ayat (5) harus dibayar sebelum berakhirnya jangka waktu pengumuman Permohonan.

(7) Dalam hal biaya pemeriksaan substantif tersebut tidak dibayarkan dalam jangka waktu sebagaimana dimaksud pada ayat (6), Permohonan dianggap ditarik kembali.

Pasal 9

(1) Dalam hal Tim Ahli Indikasi-geografis menyetujui suatu Indikasi-geografis dapat didaftar sebagaimana dimaksud dalam Pasal 8 ayat (4), Tim Ahli Indikasi-geografis mengusulkan kepada Direktorat Jenderal untuk mengumumkan informasi yang terkait dengan Indikasi-geografis tersebut termasuk Buku Persyaratannya dalam Berita Resmi Indikasi-geografis dalam waktu paling lama 30 (tiga puluh) hari sejak tanggal diterimanya usulan dari Tim Ahli Indikasi-geografis.

(2) Dalam hal Tim Ahli Indikasi-geografis menyatakan bahwa Permohonan ditolak, dalam waktu paling lama 30 (tiga puluh) hari sejak tanggal diterimanya usulan dari Tim Ahli Indikasi-geografis, Direktorat Jenderal memberitahukan secara tertulis kepada Pemohon atau melalui Kuasanya dengan menyebutkan alasannya.

(3) Dalam waktu paling lama 3 (tiga) bulan terhitung sejak tanggal penerimaan surat pemberitahuan sebagaimana dimaksud pada ayat (2), Pemohon atau Kuasanya dapat menyampaikan tanggapan atas penolakan tersebut dengan menyebutkan alasannya.

(4) Dalam hal Pemohon atau Kuasanya tidak menyampaikan tanggapan atas penolakan dalam jangka waktu sebagaimana dimaksud pada ayat (3), Direktorat Jenderal menetapkan keputusan tentang penolakan Permohonan tersebut dan memberitahukannya kepada Pemohon atau melalui Kuasanya.

(5) Dalam hal Pemohon atau Kuasanya menyampaikan tanggapan atas penolakan sebagaimana dimaksud pada ayat (3), dalam jangka waktu paling lama 30 (tiga puluh) hari terhitung sejak diterimanya tanggapan atas penolakan tersebut, Direktorat Jenderal menyampaikan tanggapan penolakan tersebut kepada Tim Ahli Indikasi-geografis.

Pasal 10

(1) Tim Ahli Indikasi-geografis melakukan pemeriksaan kembali dan mengusulkan keputusan dalam jangka waktu paling lama 3 (tiga) bulan terhitung sejak diterimanya tanggapan sebagaimana dimaksud dalam Pasal 9 ayat (5).

(2) Dalam hal Tim Ahli Indikasi-geografis menyetujui tanggapan sebagaimana dimaksud dalam Pasal 9 ayat (3), Direktorat Jenderal mengumumkan Indikasi-geografis dan Buku Persyaratan, berdasarkan usulan keputusan sebagaimana dimaksud pada ayat (1), dalam Berita Resmi Indikasi-geografis.

(3) Dalam hal Tim Ahli Indikasi-geografis tidak menyetujui tanggapan sebagaimana dimaksud dalam Pasal 9 ayat (3), Direktorat Jenderal menetapkan keputusan untuk menolak Permohonan.

(4) Dalam waktu paling lama 30 (tiga puluh) hari Direktorat Jenderal memberitahukan secara tertulis keputusan penolakan sebagaimana dimaksud dalam Pasal 9 ayat (4) dan Pasal 10 ayat (3) kepada Pemohon atau melalui Kuasanya dengan menyebutkan alasannya.

(5) Dalam hal Permohonan ditolak, segala biaya yang telah dibayarkan kepada Direktorat Jenderal tidak dapat ditarik kembali.

(6) Dalam jangka waktu paling lama 3 (tiga) bulan terhitung sejak tanggal diterimanya pemberitahuan keputusan penolakan sebagaimana dimaksud pada ayat (4), Pemohon atau Kuasanya dapat mengajukan banding kepada Komisi Banding Merek.

(7) Biaya untuk mengajukan permohonan banding ke Komisi Banding Merek harus dibayarkan pada saat mengajukan permohonan banding tersebut.

Bagian Ketiga
Pengumuman

Pasal 11

(1) Dalam jangka waktu paling lama 10 (sepuluh) hari sejak tanggal disetujuinya Indikasi-geografis untuk didaftar maupun ditolak, Direktorat Jenderal mengumumkan keputusan tersebut dalam Berita Resmi Indikasi-geografis.

(2) Dalam hal Indikasi-geografis disetujui untuk didaftar sebagaimana dimaksud pada ayat (1), Pengumuman dalam Berita Resmi Indikasi-geografis memuat nomor Permohonan, nama lengkap dan alamat Pemohon, nama dan alamat Kuasanya, Tanggal Penerimaan, Indikasi-geografis dimaksud, dan abstrak dari Buku Persyaratan.

(3) Dalam hal Indikasi-geografis ditolak sebagaimana dimaksud pada ayat (1), Pengumuman dalam Berita Resmi Indikasi-geografis memuat nomor Permohonan, nama lengkap dan alamat Pemohon, nama dan alamat Kuasanya, dan nama Indikasi-geografis yang dimohonkan pendaftarannya.

(4) Pengumuman sebagaimana dimaksud pada ayat (2) dilakukan selama 3 (tiga) bulan.

Bagian Keempat
Keberatan dan Sanggahan

Pasal 12

(1) Selama jangka waktu pengumuman sebagaimana dimaksud dalam Pasal 11 ayat (4), terhadap Indikasi-geografis yang diumumkan sebagaimana dimaksud dalam Pasal 11 ayat (2), setiap pihak dapat mengajukan keberatan secara tertulis atas Permohonan kepada Direktorat Jenderal dalam rangkap 3 (tiga), dengan membayar biaya.

(2) Keberatan sebagaimana dimaksud pada ayat (1) memuat alasan dengan disertai bukti yang cukup bahwa Permohonan seharusnya tidak dapat didaftar atau ditolak berdasarkan Peraturan Pemerintah ini.

(3) Keberatan sebagaimana dimaksud pada ayat (1) dapat pula diajukan berkenaan dengan batas daerah yang dicakup oleh Indikasi-geografis yang dimohonkan pendaftarannya.

(4) Dalam hal terdapat keberatan sebagaimana dimaksud pada ayat (2) dan/atau ayat (3), Direktorat Jenderal dalam waktu paling lama 14 (empat belas) hari terhitung sejak tanggal penerimaan keberatan, mengirimkan salinan keberatan tersebut kepada Pemohon atau Kuasanya.

(5) Pemohon atau Kuasanya berhak menyampaikan sanggahan terhadap keberatan sebagaimana dimaksud pada ayat (4) kepada Direktorat Jenderal dalam waktu paling lama 2 (dua) bulan terhitung sejak tanggal penerimaan salinan keberatan dimaksud.

Bagian Kelima
Pemeriksaan Substantif Ulang

Pasal 13

(1) Dalam hal terdapat sanggahan sebagaimana dimaksud dalam Pasal 12 ayat (5), Tim Ahli Indikasi-geografis melakukan pemeriksaan substantif ulang terhadap Indikasi-geografis dengan memperhatikan adanya sanggahan.

(2) Pemeriksaan substantif ulang sebagaimana dimaksud pada ayat (1) diselesaikan dalam waktu paling lama 6 (enam) bulan terhitung sejak tanggal berakhirnya jangka waktu penyampaian sanggahan sebagaimana dimaksud dalam Pasal 12 ayat (5).

(3) Dalam hal tidak terdapat keberatan sebagaimana dimaksud dalam Pasal 12 ayat (1), Direktorat Jenderal melakukan pendaftaran terhadap Indikasi-geografis dalam Daftar Umum Indikasi-geografis.

(4) Dalam hal hasil pemeriksaan substantif ulang sebagaimana dimaksud pada ayat (1) dan ayat (2) menyatakan bahwa keberatan dapat diterima, Direktorat Jenderal memberitahukan secara tertulis kepada Pemohon atau melalui Kuasanya bahwa Indikasi-geografis ditolak.

(5) Dalam jangka waktu paling lama 3 (tiga) bulan terhitung sejak diterimanya keputusan penolakan sebagaimana dimaksud pada ayat (4), Pemohon atau Kuasanya dapat mengajukan banding kepada Komisi Banding Merek.

(6) Dalam hal hasil pemeriksaan substantif ulang sebagaimana dimaksud pada ayat (1) dan ayat (2) menyatakan bahwa keberatan tidak dapat diterima, Direktorat Jenderal melakukan pendaftaran terhadap Indikasi-geografis dalam Daftar Umum Indikasi-geografis.

(7) Dalam jangka waktu paling lama 30 (tiga puluh) hari terhitung sejak diputuskannya hasil pemeriksaan substantif ulang, Direktorat Jenderal mengumumkan keputusan tersebut dalam Berita Resmi Indikasi-geografis.

Bagian Keenam
Tim Ahli Indikasi-Geografis

Pasal 14

(1) Tim Ahli Indikasi-geografis merupakan lembaga non-struktural yang melakukan penilaian mengenai Buku Persyaratan, dan memberikan pertimbangan/rekomendasi kepada Direktorat Jenderal sehubungan dengan pendaftaran, perubahan, pembatalan, dan/atau pengawasan Indikasi-geografis nasional.

(2) Anggota Tim Ahli Indikasi-geografis sebagaimana dimaksud pada ayat (1) terdiri atas para ahli yang memiliki kecakapan di bidang Indikasi-geografis yang berasal dari:
   a. perwakilan dari Direktorat Jenderal;
   b. perwakilan dari departemen yang membidangi masalah pertanian, perindustrian, perdagangan, dan/atau departemen terkait lainnya;
   c. perwakilan instansi atau lembaga yang berwenang untuk melakukan pengawasan dan/atau pengujian terhadap kualitas barang; dan/atau
   d. ahli lain yang kompeten.

(3) Anggota Tim Ahli Indikasi-geografis sebagaimana dimaksud pada ayat (2) diangkat dan diberhentikan oleh Menteri untuk masa jabatan selama 5 (lima) tahun.

(4) Tim Ahli Indikasi-geografis dipimpin oleh seorang ketua yang dipilih dari dan oleh para anggota Tim Ahli Indikasi-geografis.

(5) Dalam menjalankan tugas dan fungsinya sebagaimana dimaksud pada ayat (1), Tim Ahli Indikasi-geografis dibantu oleh Tim Teknis Penilaian yang keanggotaannya didasarkan pada keahlian.

(6) Tim Teknis Penilaian sebagaimana dimaksud pada ayat (5) dibentuk oleh Direktorat Jenderal atas rekomendasi Tim Ahli Indikasi-geografis.

BAB V
PEMAKAIAN DAN PENGAWASAN INDIKASI-GEOGRAFIS

Bagian Pertama
Pemakai Indikasi-Geografis

Pasal 15

(1) Pihak Produsen yang berkepentingan untuk memakai Indikasi-geografis harus mendaftarkan sebagai Pemakai Indikasi-geografis ke Direktorat Jenderal dengan dikenakan biaya sesuai ketentuan yang berlaku.

(2) Produsen sebagaimana dimaksud pada ayat (1), harus mengisi formulir pernyataan sebagaimana yang ditetapkan oleh Direktorat Jenderal dengan disertai rekomendasi dari instansi teknis yang berwenang.

(3) Dalam jangka waktu paling lama 30 (tiga puluh) hari setelah melengkapi persyaratan sebagaimana dimaksud pada ayat (2), Direktorat Jenderal mendaftarkan Produsen Pemakai Indikasi-geografis dalam Daftar Umum Pemakai Indikasi-geografis dan mengumumkan nama serta informasi pada Berita Resmi Indikasi-geografis.

Bagian Kedua
Pengawasan terhadap Pemakai Indikasi-Geografis

Pasal 16

(1) Setiap pihak dapat menyampaikan hasil pengawasan terhadap Pemakai Indikasi-Geografis kepada badan yang berwenang dengan tembusan disampaikan kepada Direktorat Jenderal bahwa informasi yang dicakup dalam Buku Persyaratan tentang barang yang dilindungi Indikasi-geografis tidak dipenuhi.

(2) Hasil pengawasan sebagaimana dimaksud pada ayat (1), harus memuat bukti beserta alasannya.

(3) Dalam waktu paling lama 7 (tujuh) hari terhitung sejak diterimanya hasil pengawasan sebagaimana dimaksud pada ayat (1), Direktorat Jenderal menyampaikan hasil pengawasan tersebut kepada Tim Ahli Indikasi-geografis.

(4) Dalam waktu paling lama 6 (enam) bulan terhitung sejak diterimanya hasil pengawasan sebagaimana dimaksud pada ayat (3), Tim Ahli Indikasi-geografis memeriksa hasil pengawasan tersebut dan menyampaikan hasil pemeriksaannya kepada Direktur Jenderal, termasuk tindakan-tindakan yang perlu dilakukan oleh Direktorat Jenderal.

Pasal 17

(1) Dalam waktu paling lama 30 (tiga puluh) hari terhitung sejak diterimanya hasil pemeriksaan sebagaimana dimaksud dalam Pasal 16 ayat (4), Direktorat Jenderal memutuskan tindakan-tindakan yang harus dilakukan, termasuk untuk melakukan pembatalan terhadap Pemakai Indikasi-geografis terdaftar.

(2) Dalam hal Direktorat Jenderal memutuskan untuk melakukan pembatalan terhadap Pemakai Indikasi-geografis terdaftar, Pemakai Indikasi-geografis terdaftar akan dicoret dari Daftar Umum Pemakai Indikasi-geografis dan selanjutnya dinyatakan sebagai tidak berhak untuk menggunakan Indikasi-geografis.

(3) Keberatan terhadap pembatalan Pemakai Indikasi-geografis terdaftar sebagaimana dimaksud pada ayat (2) dapat diajukan melalui Pengadilan Niaga paling lama 3 (tiga) bulan terhitung sejak diterimanya keputusan pembatalan tersebut.

(4) Dalam waktu paling lama 30 (tiga puluh) hari terhitung sejak diputuskannya pembatalan sebagaimana dimaksud pada ayat (2) Direktorat Jenderal mengumumkan keputusan tersebut dalam Berita Resmi Indikasi-geografis.

Pasal 18

(1) Penghapusan Pemakaian Indikasi-geografis terdaftar dapat diajukan atas prakarsa Pemakai Indikasi-geografis yang bersangkutan.

(2) Dalam hal Penghapusan sebagaimana dimaksud pada ayat (1), maka Pemakai Indikasi-geografis terdaftar akan dicoret dari Daftar Umum Pemakai Indikasi-geografis dan kemudian akan dinyatakan sebagai tidak berhak untuk menggunakan Indikasi-geografis.

(3) Dalam waktu paling lama 30 (tiga puluh) hari terhitung sejak diputuskannya penghapusan sebagaimana dimaksud pada ayat (2), Direktorat Jenderal mengumumkan keputusan tersebut dalam Berita Resmi Indikasi-geografis.

Bagian Ketiga
Pengawasan terhadap Pemakaian
Indikasi-Geografis

Pasal 19

(1) Tim Ahli Indikasi-geografis mengorganisasikan dan memonitor pengawasan terhadap pemakaian Indikasi-geografis di wilayah Republik Indonesia.

(2) Dalam menjalankan tugas dan fungsinya sebagaimana dimaksud pada ayat (1), Tim Ahli Indikasi-geografis dapat dibantu oleh Tim Teknis Pengawasan yang terdiri dari tenaga teknis di bidang barang tertentu untuk memberikan pertimbangan atau melakukan tugas pengawasan.

(3) Tim Teknis Pengawasan sebagaimana dimaksud pada ayat (2), dapat berasal dari:
   a. lembaga yang kompeten melaksanakan pengawasan baik di tingkat daerah maupun ditingkat pusat; dan/atau

b. lembaga swasta atau lembaga pemerintah non-departemen yang diakui sebagai institusi yang kompeten dalam melaksanakan inspeksi/pengawasan yang berkaitan dengan barang-barang yang dilindungi oleh Indikasi-geografis.

(4) Daftar tentang lembaga dan institusi yang telah diakui sebagaimana dimaksud pada ayat (3) harus selalu diperbaharui dan dimonitor oleh Tim Ahli Indikasi-geografis.

(5) Daftar tentang lembaga dan institusi yang telah diakui sebagaimana dimaksud pada ayat (3) harus dapat diakses masyarakat umum dan digunakan sebagai acuan bagi Pemakai Indikasi-geografis.

(6) Tim Teknis Pengawasan sebagaimana dimaksud pada ayat (2) dibentuk oleh Direktorat Jenderal atas rekomendasi Tim Ahli Indikasi-geografis.

BAB VI
INDIKASI-GEOGRAFIS DARI LUAR NEGERI

Pasal 20

(1) Permohonan yang diajukan oleh Pemohon yang bertempat tinggal atau berkedudukan tetap di luar wilayah Negara Republik Indonesia wajib diajukan melalui Kuasanya di Indonesia atau melalui perwakilan diplomatik negara asal Indikasi-geografis di Indonesia.

(2) Permohonan sebagaimana dimaksud pada ayat (1) hanya dapat didaftar apabila Indikasi-geografis tersebut telah memperoleh pengakuan dan/atau terdaftar sesuai dengan ketentuan yang berlaku di negara asalnya.

(3) Ketentuan mengenai pemeriksaan kelengkapan persyaratan administratif Permohonan sebagaimana dimaksud dalam Pasal 7 berlaku juga terhadap Permohonan dari luar negeri.

(4) Dalam hal Permohonan dari luar negeri telah memenuhi ketentuan sebagaimana dimaksud pada ayat (1), ayat (2) dan ayat (3), Direktorat Jenderal menetapkan keputusan bahwa Permohonan dapat disetujui untuk didaftar dan melakukan pengumuman sebagaimana dimaksud dalam Pasal 11.

(5) Direktorat Jenderal menolak Permohonan dari luar negeri dalam hal persyaratan sebagaimana dimaksud pada ayat (1), ayat (2), dan/atau ayat (3) tidak dipenuhi.

(6) Penolakan sebagaimana dimaksud pada ayat (5) diberitahukan kepada Pemohon melalui Kuasanya atau perwakilan diplomatiknya di Indonesia dalam waktu paling lama 30 (tiga puluh) hari terhitung sejak tanggal keputusan penolakan tersebut.

(7) Ketentuan mengenai tata cara pengumuman, keberatan, dan sanggahan serta permohonan banding dalam Peraturan Pemerintah ini berlaku secara mutatis mutandis terhadap Permohonan dari luar negeri.

(8) Permohonan dari luar negeri yang didaftar diberi perlindungan sesuai dengan ketentuan di dalam Peraturan Pemerintah ini.

BAB VII
PERUBAHAN DAN BERAKHIRNYA PERLINDUNGAN

Bagian Pertama
Perubahan dan Penarikan Kembali Permohonan

Pasal 21

(1) Perubahan terhadap Permohonan sebagaimana dimaksud dalam Pasal 6 dan Pasal 20 hanya dapat diajukan selama Permohonan belum diumumkan dalam Berita Resmi Indikasi-geografis sebagaimana dimaksud dalam Pasal 11.

(2) Penarikan kembali terhadap Permohonan sebagaimana dimaksud dalam Pasal 6 dan Pasal 20 hanya dapat dilakukan sebelum Direktorat Jenderal memutuskan pendaftaran Indikasi-geografis.

(3) Dalam hal Permohonan ditarik kembali sebagaimana dimaksud pada ayat (2), segala biaya yang telah dibayarkan kepada Direktorat Jenderal tidak dapat ditarik kembali.

Bagian Kedua
Perubahan Buku Persyaratan
Setelah Pendaftaran

Pasal 22

(1) Pemohon dapat mengajukan permohonan perubahan terhadap Buku Persyaratan sesuai dengan perkembangan di bidang ilmu pengetahuan dan teknologi atau adanya perubahan mengenai batas geografis.

(2) Permohonan perubahan terhadap Buku Persyaratan sebagaimana dimaksud pada ayat (1) diajukan secara tertulis kepada Direktorat Jenderal dengan menyampaikan alasan dan perubahannya.

(3) Dalam hal permohonan perubahan Buku Persyaratan sebagaimana dimaksud pada ayat (1) dapat diterima, Direktorat Jenderal melakukan Pengumuman mengenai perubahan Buku Persyaratan tersebut dalam Berita Resmi Indikasi-geografis.

(4) Terhadap perubahan Buku Persyaratan diberlakukan ketentuan mengenai pengumuman sebagaimana dimaksud dalam Pasal 11, serta keberatan dan sanggahan sebagaimana dimaksud dalam Pasal 12.

(5) Dalam hal Direktorat Jenderal menolak permohonan perubahan Buku Persyaratan, Pemohon atau Kuasanya dapat mengajukan banding kepada Komisi Banding Merek.

(6) Pengajuan banding sebagaimana dimaksud pada ayat (5) dapat dilakukan dalam jangka waktu paling lama 3 (tiga) bulan terhitung sejak diterimanya keputusan penolakan dimaksud.

Bagian Ketiga
Berakhirnya Perlindungan
Indikasi-geografis

Pasal 23

(1) Setiap pihak, termasuk Tim Ahli Indikasi-geografis dapat menyampaikan kepada Direktorat Jenderal hasil pengamatan bahwa karakteristik khas dan/atau kualitas yang menjadi dasar bagi diberikannya perlindungan atas Indikasi-geografis telah tidak ada.

(2) Dalam hal hasil pengamatan sebagaimana dimaksud pada ayat (1) bukan berasal dari Tim Ahli Indikasi-geografis, Direktorat Jenderal meneruskan hasil pengamatan tersebut kepada Tim Ahli Indikasi-geografis dalam waktu paling lama 30 (tiga puluh) hari terhitung sejak diterimanya hasil pengamatan tersebut.

(3) Dalam waktu 6 (enam) bulan terhitung sejak diterimanya hasil pengamatan sebagaimana dimaksud pada ayat (2), Tim Ahli Indikasi-geografis melakukan pemeriksaan dan memberitahukan hasil keputusannya serta langkah-langkah yang harus dilakukan kepada Direktorat Jenderal.

(4) Dalam waktu 30 (tiga puluh) hari terhitung sejak diterimanya hasil keputusan sebagaimana dimaksud pada ayat (3), Direktorat Jenderal mempertimbangkan hasil

keputusan Tim Ahli Indikasi-geografis tersebut dan tindakan-tindakan yang harus dilakukan, termasuk untuk membatalkan Indikasi-geografis.

(5) Dalam hal Direktorat Jenderal memberikan keputusan pembatalan terhadap Indikasi-geografis, Direktorat Jenderal memberitahukan secara tertulis kepada Pemohon atau Kuasanya dan kepada seluruh Pemakai Indikasi-geografis sebagaimana dimaksud dalam Pasal 15 ayat (3), atau melalui Kuasanya dalam waktu paling lama 14 (empat belas) hari terhitung sejak diterimanya keputusan tersebut.

(6) Dalam waktu paling lama 30 (tiga puluh) hari terhitung sejak diputuskannya hasil pembatalan sebagaimana dimaksud pada ayat (5), Direktorat Jenderal mengumumkan keputusan tersebut dalam Berita Resmi Indikasi-geografis.

(7) Pengumuman sebagaimana dimaksud pada ayat (6) harus menyatakan pembatalan Indikasi-geografis dan berakhirnya pemakaian Indikasi-geografis oleh para Pemakai Indikasi-geografis.

(8) Keberatan terhadap pembatalan Indikasi-geografis sebagaimana dimaksud pada ayat (5) dapat diajukan kepada Pengadilan Niaga paling lama 3 (tiga) bulan terhitung sejak diterimanya keputusan pembatalan tersebut.

BAB VIII
BANDING INDIKASI-GEOGRAFIS

Pasal 24

(1) Permohonan banding dapat diajukan kepada Komisi Banding Merek oleh Pemohon atau Kuasanya terhadap penolakan Permohonan sebagaimana dimaksud dalam Pasal 9 ayat (4), Pasal 10 ayat (3), Pasal 13 ayat (4), dan Pasal 22 ayat (5).

(2) Permohonan banding sebagaimana dimaksud pada ayat (1) diajukan secara tertulis kepada Komisi Banding Merek dalam jangka waktu sebagaimana dimaksud dalam Pasal 10 ayat (6), Pasal 13 ayat (5), dan Pasal 22 ayat (6), dengan membayar biaya.

(3) Ketentuan mengenai permohonan banding Indikasi-geografis berlaku secara *mutatis mutandis* ketentuan Pasal 29, Pasal 30, Pasal 31, Pasal 32, Pasal 33, dan Pasal 34 Undang-Undang Nomor 15 Tahun 2001 tentang Merek serta Peraturan Pelaksanaannya.

BAB IX
PELANGGARAN DAN GUGATAN

Bagian Pertama
Pelanggaran Indikasi-Geografis

Pasal 25

Pelanggaran Indikasi-geografis mencakup:

a. pemakaian Indikasi-geografis yang bersifat komersial, baik secara langsung maupun tidak langsung atas barang yang tidak memenuhi Buku Persyaratan;
b. pemakaian suatu tanda Indikasi-geografis yang bersifat komersial, baik secara langsung maupun tidak langsung atas barang yang dilindungi atau tidak dilindungi dengan maksud:
    1. untuk menunjukkan bahwa barang tersebut sebanding kualitasnya dengan barang yang dilindungi oleh Indikasi-geografis;
    2. untuk mendapatkan keuntungan dari pemakaian tersebut; atau
    3. untuk mendapatkan keuntungan atas reputasi Indikasi-geografis;
c. pemakaian Indikasi-geografis yang dapat menyesatkan masyarakat sehubungan dengan asal usul geografis barang itu;
d. pemakaian Indikasi-geografis secara tanpa hak sekalipun tempat asal barang dinyatakan;

e. peniruan atau penyalahgunaan lainnya yang dapat menyesatkan sehubungan dengan asal tempat barang atau kualitas barang yang tercermin dari pernyataan yang terdapat pada:
   1. pembungkus atau kemasan;
   2. keterangan dalam iklan;
   3. keterangan dalam dokumen mengenai barang tersebut;
   4. informasi yang dapat menyesatkan mengenai asal usulnya (dalam hal pengepakan barang dalam suatu kemasan); atau
f. Tindakan lainnya yang dapat menyesatkan masyarakat luas mengenai kebenaran asal barang tersebut.

Bagian Kedua
Gugatan

Pasal 26

(1) Pengajuan gugatan terhadap pelanggaran sebagaimana dimaksud dalam Pasal 25, dilakukan sesuai dengan ketentuan Pasal 57 ayat (1) dan Pasal 58 Undang-Undang Nomor 15 Tahun 2001 tentang Merek.

(2) Gugatan sebagaimana dimaksud pada ayat (1) dapat dilakukan oleh:
   a. setiap produsen yang berhak menggunakan Indikasi-geografis;
   b. lembaga yang mewakili masyarakat; atau
   c. lembaga yang diberi kewenangan untuk itu.

(3) Ketentuan mengenai tata cara pengajuan gugatan untuk Indikasi-geografis berlaku secara *mutatis mutandis* ketentuan Pasal 80 Undang-Undang Nomor 15 Tahun 2001 tentang Merek.

BAB X
PEMAKAI TERDAHULU INDIKASI-GEOGRAFIS

Pasal 27

(1) Dalam hal adanya pemakaian suatu tanda sebagaimana dimaksud dalam Pasal 56 ayat (8) Undang-Undang Nomor 15 Tahun 2001 tentang Merek, apabila sebelum atau pada saat dimohonkan pendaftaran sebagai Indikasi-geografis atas barang sejenis atau yang sama suatu tanda telah dipakai dengan itikad baik oleh pihak lain yang tidak berhak menggunakan Indikasi-geografis, maka pihak lain tersebut dapat menggunakan tanda dimaksud untuk jangka waktu 2 (dua) tahun sejak tanda dimaksud terdaftar sebagai Indikasi-geografis dengan syarat pihak lain tersebut menyatakan kebenaran mengenai tempat asal barang dan menjamin bahwa pemakaian tanda dimaksud tidak akan menyesatkan Indikasi-geografis terdaftar.

(2) Dalam hal suatu tanda sebagaimana yang dimaksud dalam Pasal 56 ayat (8) Undang-Undang Nomor 15 Tahun 2001 tentang Merek telah terdaftar atau dipakai sebagai merek sebelum atau pada saat permohonan suatu Indikasi-geografis atas barang sejenis atau yang sama dan tanda tersebut kemudian dinyatakan terdaftar sebagai Indikasi-geografis, maka pemakaian tanda sebagai merek dengan itikad baik oleh pihak lain yang tidak berhak menggunakan Indikasi-geografis tetap dimungkinkan dengan syarat pemakai merek tersebut menyatakan kebenaran mengenai tempat asal barang dan menjamin bahwa pemakaian merek dimaksud tidak akan menyesatkan Indikasi-geografis terdaftar.

BAB XI
KETENTUAN PENUTUP

Pasal 28

Peraturan Pemerintah ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Peraturan Pemerintah ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Ditetapkan di Jakarta
pada tanggal 4 September 2007

PRESIDEN REPUBLIK INDONESIA,

Ttd.

DR. H. SUSILO BAMBANG YUDHOYONO

Diundangkan di Jakarta
pada tanggal 4 September 2007

MENTERI HUKUM DAN HAK ASASI MANUSIA REPUBLIK INDONESIA,

Ttd.

ANDI MATTALATTA

LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 2007 NOMOR 115

PENJELASAN
ATAS
PERATURAN PEMERINTAH REPUBLIK INDONESIA
NOMOR 51 TAHUN 2007
TENTANG
INDIKASI-GEOGRAFIS

I. UMUM

Dalam kehidupan sehari-hari masyarakat mengenal atau menyebut nama suatu barang yang diikuti dengan nama tempat atau daerah asal barang tersebut. Pengungkapan tersebut dikenal sebagai Indikasi-geografis dan merupakan hal baru di Indonesia, meskipun hal tersebut sudah lama berkembang di negara-negara Eropa.

Sebagaimana halnya dengan Merek, Indikasi-geografis merupakan salah satu bentuk kekayaan intelektual yang wajib diupayakan perlindungannya bagi negara-negara anggota *World Trade Organization.* Ketentuan mengenai hal tersebut tertuang dalam *Trade Related Intellectual Property Rights (TRIPs)* khususnya *Article 22* sampai dengan *Article 24*. Untuk melaksanakan kewajiban tersebut, Pasal 56 ayat (9) Undang-Undang Nomor 15 Tahun 2001 tentang Merek telah mengatur bahwa ketentuan mengenai tata cara pendaftaran Indikasi-geografis akan diatur lebih lanjut dalam Peraturan Pemerintah. Berdasarkan pertimbangan tersebut maka disusunlah Peraturan Pemerintah ini yang dimaksudkan untuk mengatur secara menyeluruh ketentuan pelaksanaan Undang-Undang Nomor 15 Tahun 2001 tentang Merek mengenai Indikasi-geografis.

Indikasi-geografis merupakan suatu tanda yang tanpa disadari sudah lama ada dan secara tidak langsung dapat menunjukkan adanya kekhususan pada suatu barang yang dihasilkan dari daerah tertentu. Tanda dimaksud selanjutnya dapat digunakan untuk menunjukkan asal suatu barang, baik yang berupa hasil pertanian, bahan pangan, hasil kerajinan tangan, atau barang lainnya, termasuk bahan mentah dan/atau hasil olahan, baik yang berasal dari hasil pertanian maupun yang berasal dari hasil tambang.

Penunjukkan asal suatu barang merupakan hal penting, karena pengaruh dari faktor geografis termasuk faktor alam, faktor manusia, atau kombinasi dari kedua faktor tersebut di daerah tertentu tempat barang tersebut dihasilkan dapat memberikan ciri dan kualitas tertentu pada barang tersebut. Ciri dan kualitas barang yang dipelihara dan dapat dipertahankan dalam jangka waktu tertentu akan melahirkan reputasi (keterkenalan) atas barang tersebut, yang selanjutnya memungkinkan barang tersebut memiliki nilai ekonomi tinggi. Karena itu sepatutnya barang tersebut mendapat perlindungan hukum yang memadai.

Perlindungan hukum atas Indikasi-geografis dapat diberikan apabila pendaftarannya telah dilakukan. Maksud pendaftaran Indikasi-geografis adalah untuk menjamin kepastian hukum. Jangka waktu perlindungannya dapat berlangsung secara tidak terbatas selama ciri dan/atau kualitas yang menjadi dasar diberikannya perlindungan masih ada.

Adapun ciri dan/atau kualitas yang menjadi dasar diberikannya perlindungan dituangkan dalam Buku Persyaratan, yang juga memuat informasi tentang pengaruh lingkungan geografis, faktor alam, serta faktor manusia yang mempengaruhi kualitas atau karakteristik barang tersebut; selain itu juga mencakup informasi tentang: peta wilayah, sejarah, dan tradisi, proses pengolahan, metode pengujian kualitas barang, serta label yang digunakan. Buku Persyaratan tersebut penyusunannya dilakukan oleh kelompok masyarakat tempat dihasilkannya barang dimaksud.

Pemilik Indikasi-geografis adalah Pemohon dan kelompok masyarakat di daerah tempat dihasilkannya barang tertentu yang berkompeten untuk memelihara, mempertahankan, dan memakai Indikasi-geografis sehubungan dengan keperluan

bisnis/usahanya. Sedangkan seorang produsen yang dapat menghasilkan barang sesuai dengan ketentuan yang diungkapkan dalam Buku Persyaratan dan bersedia patuh untuk selalu menerapkan ketentuan sebagaimana yang diatur dalam Buku Persyaratan tersebut, dapat memakai Indikasi-geografis terkait setelah sebelumnya mendaftarkan dirinya sebagai Pemakai Indikasi-geografis di Direktorat Jenderal.

Sebagai negara kepulauan yang kaya akan pengetahuan, tradisi, dan budaya, serta iklim tropis yang menghasilkan berbagai macam barang yang memiliki potensi ekonomi yang tidak kecil, sudah seharusnya Indonesia memiliki sistem perlindungan Indikasi-geografis yang memadai. Melalui perlindungan Indikasi-geografis yang optimal tidak saja kelestarian lingkungan diharapkan dapat terjaga, pemberdayaan sumber daya alam dan manusia di daerah diharapkan dapat lebih dimaksimalkan. Di samping itu, migrasi tenaga kerja potensial dari suatu daerah ke daerah perkotaan diharapkan dapat dicegah, dengan tercipta/terbukanya peluang dan lapangan kerja untuk menghasilkan barang tertentu yang dilindungi dengan Indikasi-geografis dan diharapkan memiliki nilai ekonomi yang tidak kecil di daerah tersebut.

II. PASAL DEMI PASAL

Pasal 1

Cukup jelas.

Pasal 2

Ayat (1)

Yang dimaksud dengan "tanda tertentu lainnya" adalah tanda yang berupa kata, gambar, atau kombinasi dari unsur-unsur tersebut.

Contoh :

- Kata "Minang" mengindikasikan daerah Sumatera Barat.
- Gambar rumah adat Toraja, mengindikasikan daerah Toraja di Sulawesi Selatan.

Ayat (2)

Yang dimaksud dengan "pertanian" mencakup juga: kehutanan, perkebunan, peternakan, perikanan, dan kelautan.

Sedangkan yang dimaksud dengan "barang lainnya" mencakup antara lain bahan mentah dan/atau hasil olahan dari hasil pertanian maupun yang berasal dari hasil tambang.

Ayat (3)

Yang dimaksud dengan "Daftar Umum Indikasi-geografis" adalah suatu buku yang memuat Indikasi-geografis yang terdaftar pada Direktorat Jenderal.

Ayat (4)

Suatu nama, indikasi atau tanda yang telah terdaftar sebagai Indikasi-geografis tidak dapat didegradasi, dianggap sebagai nama barang, dan selanjutnya menjadi milik umum.

Ayat (5)

Cukup jelas.

Pasal 3

Huruf a

Cukup Jelas.

Huruf b

Cukup Jelas.

Huruf c

Apabila suatu Indikasi-geografis digunakan sebagai nama varietas tanaman tertentu, nama Indikasi-geografis tersebut hanya dapat digunakan untuk verietas tanaman yang bersangkutan saja.

Contoh:

Nama/kata ”Cianjur” telah dikenal sebagai nama salah satu varietas tanaman padi. Oleh karenanya, kata ”Cianjur” tidak diperkenankan untuk digunakan sebagai Indikasi-geografis bagi varietas tanaman padi lainnya sekalipun pembudidayaannya dilakukan di daerah Cianjur.

Hal ini dimaksudkan untuk menghindarkan timbulnya kemungkinan yang menyesatkan.

Walaupun demikian, kata ”Cianjur” dapat digunakan sebagai Indikasi-geografis bagi varietas tanaman lain ataupun barang lainnya, misalnya: salak, markisa, tauco, dan sebagainya.

Huruf d

Indikasi yang bersifat generik adalah indikasi tentang suatu barang yang telah menjadi milik umum karena sering digunakan dalam bahasa sehari-hari, dan karenanya tidak dilindungi.

Contoh: tahu, tempe, batik, jeruk bali, pisang ambon, dan sebagainya.

Pasal 4

Cukup jelas.

Pasal 5

Ayat (1)

Cukup jelas.

Ayat (2)

Cukup jelas.

Ayat (3)

Huruf a

Yang dimaksud dengan “lembaga” antara lain mencakup koperasi, asosiasi, atau yayasan, yang anggotanya adalah Produsen setempat.

Yang dimaksud dengan “lembaga yang diberi kewenangan untuk itu” adalah lembaga Pemerintah di daerah yang membidangi barang yang diajukan untuk permohonan, seperti Pemerintah Daerah baik di tingkat Provinsi maupun Kabupaten/Kota.

Huruf c

Cukup jelas.

Pasal 6

Ayat (1)

Cukup jelas.

Ayat (2)

Cukup jelas.

Ayat (3)

Huruf a

Cukup jelas.

Huruf b

Cukup jelas.

Huruf c

Yang dimaksud dengan ”membedakan barang tertentu dengan barang lain yang memiliki kategori sama” adalah membandingkan suatu barang dengan barang lain yang sama.

Misalnya: beras tertentu yang dibandingkan dengan beras yang lain.

Huruf d

Uraian mengenai lingkungan geografis setempat dapat mencakup antara lain uraian tentang: suhu tertinggi, terendah, dan rata-rata;

tingkat curah hujan; kelembaban udara; intensitas sinar matahari; ketinggian; dan/atau jenis/kondisi tanah.

Huruf e

Cukup jelas.

Huruf f

Uraian mengenai tradisi dan sejarah yang berhubungan dengan pemakaian Indikasi-geografis mencakup antara lain uraian mengenai tradisi masyarakat yang sudah berlangsung lama berkaitan dengan proses produksi barang yang berasal dari daerah tersebut.

Huruf g

Cukup jelas.

Huruf h

Cukup jelas.

Huruf i

Cukup jelas.

Ayat (4)

Yang dimaksud dengan ”rekomendasi” adalah surat keterangan yang dikeluarkan oleh instansi pemerintah yang membidangi barang yang diajukan permohonannya.

Pasal 7

Cukup jelas.

Pasal 8

Cukup jelas.

Pasal 9

Cukup jelas.

Pasal 10

Cukup jelas.

Pasal 11

Ayat (1)

Cukup jelas.

Ayat (2)

Yang dimaksud dengan “abstrak dari Buku Persyaratan” adalah informasi ringkas yang menggambarkan hal-hal penting mengenai barang yang akan dilindungi dengan Indikasi-geografis.

Keseluruhan isi Buku Persyaratan dapat diperoleh di Direktorat Jenderal.

Ayat (3)

Cukup jelas.

Ayat (4)

Cukup jelas.

Pasal 12

Cukup jelas.

Pasal 13

Cukup jelas.

Pasal 14

Ayat (1)

Yang dimaksud dengan “Indikasi-geografis nasional” adalah Indikasi-geografis yang berasal dari dalam negeri.

Yang dimaksud dengan “melakukan penilaian mengenai Buku Persyaratan” adalah melakukan pemeriksaan substantif terhadap usulan Buku Persyaratan yang diajukan oleh Pemohon.

Ayat (2)

Yang dimaksud dengan “ahli yang memiliki kecakapan di bidang Indikasi-geografis” adalah orang yang mempunyai keahlian antara lain di bidang: pertanian, geologi, meteorologi, kelautan, kehutanan, makanan, minuman, dan/atau bidang-bidang lainnya yang berkaitan dengan Indikasi-geografis.

Ayat (3)

Cukup jelas.

Ayat (4)

Cukup jelas.

Ayat (5)

Tim Teknis Penilaian dapat berjumlah lebih dari 1 (satu) Tim Teknis.

Ayat (6)

Cukup jelas.

Pasal 15

Cukup jelas.

Pasal 16

Ayat (1)

Yang dimaksud dengan “badan yang berwenang untuk melakukan pengawasan” adalah lembaga baik Pemerintah maupun non Pemerintah yang berkompeten untuk melakukan penilaian dan pengawasan mengenai kualitas/mutu suatu barang.

Contoh:

- Badan Pengawasan Obat dan Makanan (BPOM), yang berkompeten untuk melakukan penilaian, pengujian, dan/atau pengawasan barang berupa obat atau makanan.
- Sucofindo, yang berkompeten untuk melakukan pengujian mutu suatu barang.

Ayat (2)

Cukup jelas.

Ayat (3)

Cukup jelas.

Ayat (4)

Cukup jelas.

Pasal 17

Cukup jelas.

Pasal 18

Cukup jelas.

Pasal 19

Ayat (1)

Pengawasan dapat dilaksanakan disepanjang mata rantai produksi dan pendistribusian barang.

Ayat (2)

Para ahli yang ditunjuk dan bertanggung jawab terhadap pengawasan tidak boleh memiliki kepentingan pribadi (*conflict of interest*) sehubungan dengan Indikasi-geografis yang akan diawasi.

Ayat (3)

Cukup jelas.

Ayat (4)

Cukup jelas.

Ayat (5)

Cukup jelas.

Ayat (6)

Cukup jelas.

Pasal 20

Cukup jelas.

Pasal 21

Cukup jelas.

Pasal 22

Cukup jelas.

Pasal 23

Cukup jelas.

Pasal 24

Cukup jelas.

Pasal 25

Huruf a

Cukup jelas.

Huruf b

Cukup jelas.

Huruf c

Cukup jelas.

Huruf d

Yang dimaksud dengan "Pemakaian Indikasi-geografis secara tanpa hak" mencakup antara lain: penyalahgunaan, peniruan, dan pencitraan negatif terhadap Indikasi-geografis tertentu, seperti: penggunaan kata "ala", bentuknya sama dengan, serupa, dibuat dengan cara yang sama, sama sifatnya, mirip, seperti, atau transliterasi, atau yang sejenis/sepadan dengan kata-kata tersebut.

Huruf e

Cukup jelas.

Huruf f

Cukup jelas.

Pasal 26

Cukup jelas.

Pasal 27

Ayat (1)

Yang dimaksud dengan "tanda telah dipakai" adalah tanda yang tidak terdaftar.

Ayat (2)

Cukup jelas.

Pasal 28

Cukup jelas.

TAMBAHAN LEMBARAN NEGARA REPUBLIK INDONESIA NOMOR 4763

Menteri Perindustrian Republik Indonesia

Menteri Perindustrian Republik Indonesia

PERATURAN
MENTERI PERINDUSTRIAN REPUBLIK INDONESIA
NOMOR : 74/M-IND/PER/9/2007
TENTANG
PENGGUNAAN BATIKMARK "batik INDONESIA"
PADA BATIK BUATAN INDONESIA

MENTERI PERINDUSTRIAN REPUBLIK INDONESIA,

Menimbang :

a. bahwa batik merupakan salah satu seni adiluhung dan mempunyai filosofi yang tinggi serta berkaitan erat dengan tata kehidupan yang mencerminkan budaya bangsa Indonesia yang perlu digali, dipelihara, dilestarikan, dan dilindungi secara hukum dari berbagai persaingan tidak sehat di bidang Hak Kekayaan Intelektual dan perdagangan dalam negeri maupun internasional;

b. bahwa dalam rangka pemeliharaan, pelestarian dan perlindungan hukum terhadap batik Indonesia serta mempermudah masyarakat Indonesia dan asing mengenali batik buatan Indonesia, perlu simbol atau tanda Batikmark "batik INDONESIA" sebagai identitas batik buatan Indonesia;

c. bahwa berdasarkan pertimbangan sebagaimana dimaksud pada huruf a dan b perlu dikeluarkan Peraturan Menteri Perindustrian;

Mengingat :

1. Undang-Undang No.5 Tahun 1984 tentang Perindustrian (Lembaran Negara Tahun 1984 Nomor 22, Tambahan Lembaran Negara Nomor 3274);
2. Undang-Undang Nomor 5 Tahun 1992 tentang Benda Cagar Budaya (Lembaran Negara Tahun 1992 Nomor 27, Tambahan Lembaran Negara Nomor 3470);
3. Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen (Lembaran Negara Nomor 42, Tambahan Lembaran Negara Nomor 3821);
4. Undang-Undang Nomor 19 Tahun 2002 tentang Hak Cipta (Lembaran Negara Nomor 85, Tambahan Lembaran Negara Nomor 4220);

5. Peraturan Pemerintah Nomor 58 Tahun 2001 tentang Pembinaan dan Pengawasan Penyelenggaraan Perlindungan Konsumen (Lembaran Negara No. 103. Tambahan Lembaran Negara No.4126);
6. Keputusan Presiden Republik Indonesia Nomor 187/M Tahun 2004 tentang Pembentukan Kabinet Indonesia Bersatu sebagaimana telah beberapa kali diubah terakhir dengan Keputusan Presiden Republik Indonesia Nomor 31/P Tahun 2007;
7. Peraturan Presiden Republik Indonesia Nomor 9 Tahun 2005 tentang Kedudukan. Tugas. Fungsi. Susunan Organisasi dan Tata Kerja Kementerian Negara Republik Indonesia sebagaimana telah beberapa kali diubah terakhir dengan Peraturan Presiden Republik Indonesia Nomor 94 Tahun 2006;
8. Peraturan Presiden Republik Indonesia Nomor 10 Tahun 2005 tentang Unit Organisasi dan Tugas Eselon I Kementerian Negara Republik Indonesia sebagaimana telah beberapa kali diubah terakhir dengan Peraturan Presiden Nomor 17 Tahun 2007;
9. Peraturan Menteri Perindustrian Nomor 01/M-IND/PER/3/2005 tentang Organisasi dan Tata Kerja Departemen Perindustrian;
10. Peraturan Menteri Perindustrian RI Nomor 19/M-IND/PER/5/2006 tentang Standardisasi. Pembinaan dan Pengawasan Standar Nasional Indonesia Bidang Industri;

MEMUTUSKAN :

Menetapkan : PERATURAN MENTERI PERINDUSTRIAN REPUBLIK INDONESIA TENTANG PENGGUNAAN BATIKMARK "batik INDONESIA" PADA BATIK BUATAN INDONESIA

Pasal 1

Dalam Peraturan Menteri ini yang dimaksud dengan :

1. Batik adalah bahan tekstil hasil pewarnaan secara perintangan dengan menggunakan lilin batik sebagai zat perintang. berupa batik tulis. batik cap atau batik kombinasi tulis dan cap.
2. Batikmark "batik INDONESIA" selanjutnya disebut Batikmark adalah suatu tanda yang menunjukkan identitas dan ciri batik buatan Indonesia yang terdiri dari tiga jenis yaitu batik tulis. batik cap dan batik kombinasi tulis dan cap dengan Hak Cipta Nomor 034100 tanggal pendaftaran 05 Juni 2007.
3. Perusahaan adalah bentuk usaha yang dapat berbentuk perseorangan/perajin, persekutuan atau badan hukum yang menjalankan usaha batik yang bersifat tetap dan terus menerus dan yang didirikan. bekerja serta berkedudukan dalam wilayah Negara Republik Indonesia untuk tujuan memperoleh keuntungan dan atau laba;
4. Perajin adalah orang yang mempunyai keterampilan menghasilkan batik melalui proses produksi menggunakan tangan atau alat yang digerakkan dengan tangan.
5. Standar Nasional Indonesia adalah standar yang ditetapkan oleh Badan Standardisasi Nasional (BSN) yang berlaku secara nasional di Indonesia.

6. Laboratorium Penguji adalah laboratorium yang melakukan kegiatan pengujian terhadap contoh barang sesuai spesifikasi/metode uji SNI dan telah mendapatkan akreditasi oleh Komite Akreditasi Nasional (KAN).
7. Menteri adalah Menteri yang bidang tugas dan tanggung jawabnya di bidang perindustrian

Pasal 2

Penggunaan Batikmark bertujuan :

a. memberikan jaminan mutu batik Indonesia;
b. meningkatan kepercayaan konsumen dalam negeri maupun luar negeri terhadap mutu batik Indonesia;
c. memberikan perlindungan hukum dari berbagai persaingan tidak sehat di bidang Hak Kekayaan Intelektual dalam perdagangan dalam negeri maupun internasional;
d. memberikan identitas batik Indonesia agar masyarakat Indonesia dan asing dapat dengan mudah mengenali batik buatan Indonesia.

Pasal 3

Pengaturan Batikmark sebagai berikut :

a. Bentuk :
   1. Mempergunakan kata "batik INDONESIA".
   2. Mempergunakan huruf kecil pada kata "batik".
   3. Mempergunakan huruf kapital pada kata "INDONESIA".
   4. Untuk kata batik, huruf b berbentuk titik/cecek; huruf a berbentuk sulur; huruf t berbentuk bunga; huruf i berbentuk titik/cecek; huruf k berbentuk awan.
   5. Terdapat nomor Sertifikat Penggunaan Batikmark
   6. Berupa tulisan/bordir/sulam/cap.

   Bentuk dan skala ukuran Batikmark sebagaimana tercantum pada Lampiran I Peraturan Menteri ini.
b. Media :

   Media Batikmark dapat berupa kertas, kain, dan atau plastik.
c. Ukuran :

   Ukuran Batikmark dibuat sesuai dengan kebutuhan batik yang bersangkutan.
d. Warna :

   Mempergunakan warna dasar hitam dengan tulisan batik :
   1. Warna emas untuk jenis batik tulis.
   2. Warna putih untuk jenis batik cap.
   3. Warna perak untuk jenis batik kombinasi cap dan tulis.

Pasal 4

Arti dan makna "batik INDONESIA" :

1. Kata "batik INDONESIA" sebagai identitas yang lugas dan khas Indonesia.
2. Huruf kecil pada kata "batik" menunjukkan kesan ramah dan merakyat karena kain batik dapat dipergunakan oleh semua lapisan masyarakat.
3. Huruf kapital pada kata "INDONESIA" memberikan kesan kebanggaan milik bangsa Indonesia.

4. Penggunaan kata batik dengan bentuk huruf sebagaimana dimaksud dalam Pasal 3 huruf a angka 4 menterjemahkan kekhasan motif batik menjadi bentuk huruf yang organik dan memberikan sentuhan berupa ragam khas batik.

Pasal 5

(1) Persyaratan untuk memperoleh Sertifikat Penggunaan Batikmark :
   a. Perusahaan telah memiliki merek terdaftar;
   b. Batik yang bersangkutan memiliki sifat mengkerut, tahan gosok warna dan tahan luntur warna terhadap pencucian dengan Standar Nasional Indonesia (SNI) sebagai acuan;
   c. Batik yang bersangkutan memiliki ciri batik tulis, batik cap atau batik kombinasi tulis dan cap dengan Standar Nasional Indonesia (SNI) sebagai acuan.

(2) Standar Nasional Indonesia (SNI) yang diacu sebagaimana dimaksud pada ayat (1) huruf b dan c sebagaimana tercantum pada Lampiran II Peraturan Menteri ini.

Pasal 6

Prosedur untuk memperoleh Sertifikat Penggunaan Batikmark :

a. Perusahaan mengajukan permohonan tertulis dilengkapi dengan profil perusahaan kepada Kepala Balai Besar Kerajinan dan Batik Yogyakarta;
b. Balai Besar Kerajinan dan Batik Yogyakarta dapat menunjuk laboratorium penguji untuk melaksanakan pengujian sesuai dengan ketentuan Pasal 5;
c. Laboratorium penguji melaksanakan pengambilan contoh di lokasi perusahaan;
d. Hasil pengujian dilaporkan kepada Kepala Balai Besar Kerajinan dan Batik Yogyakarta;
e. Terhadap hasil pengujian yang memenuhi persyaratan Pasal 5 diterbitkan Sertifikat Penggunaan Batikmark oleh Balai Besar Kerajinan dan Batik Yogyakarta;
f. Sertifikat Penggunaan Batikmark sebagaimana dimaksud pada huruf e diterbitkan selambat-lambatnya 30 (tiga puluh) hari kerja setelah pengambilan contoh.

Pasal 7

(1) Perusahaan yang telah memiliki Sertifikat Penggunaan Batikmark wajib memenuhi seluruh ketentuan Pasal 5.
(2) Masa berlaku Sertifikat Penggunaan Batikmark selama 3 (tiga) tahun dan dapat diperpanjang untuk jangka waktu yang sama.
(3) Perpanjangan masa berlaku Sertifikat Penggunaan Batikmark sebagaimana dimaksud pada ayat (2) diberikan setelah memenuhi ketentuan yang berlaku.
(4) Pengawasan terhadap konsistensi pemenuhan seluruh ketentuan sebagaimana dimaksud pada ayat (1) dilakukan 1 (satu) kali dalam setahun oleh Balai Besar Kerajinan dan Batik Yogyakarta.

Pasal 8

(1) Batikmark dapat dibuat sendiri oleh perusahaan yang telah memperoleh Sertifikat Penggunaan Batikmark.
(2) Apabila perusahaan sebagaimana dimaksud pada ayat (1) tidak dapat membuat sendiri Batikmark, dapat meminta bantuan pada Balai Besar Kerajinan dan Batik Yogyakarta.

Pasal 9

Kewajiban perusahaan adalah :

a. Memberikan data dan informasi yang benar mengenai batik yang dimohonkan Sertifikat Penggunaan Batikmark;
b. Tidak boleh memindahtangankan hak penggunaan Batikmark yang telah diperoleh kepada pihak lain;
c. Melaporkan jumlah batik yang menggunakan Batikmark per semester yaitu setiap minggu pertama bulan Juli dan minggu pertama bulan Januari tahun berikutnya kepada Balai Besar Kerajinan dan Batik Yogyakarta dengan menggunakan format sebagaimana tercantum pada Lampiran III Peraturan Menteri ini.

Pasal 10

Perusahaan yang memiliki Sertifikat Penggunaan Batikmark bertanggung jawab atas kesesuaian jenis dan mutu batik yang diproduksi dan atau yang diperdagangkan sesuai dengan ketentuan sebagaimana dimaksud dalam Pasal 7 ayat (1).

Pasal 11

(1) Batikmark sebagaimana dimaksud dalam Pasal 3 dicantumkan pada kemasan batik dan atau batik termasuk produk turunannya antara lain busana batik, sprei batik.
(2) Pencantuman Batikmark pada kemasan atau batik sebagaimana dimaksud pada ayat (1) harus dapat dibaca dengan jelas.

Pasal 12

(1) Pelanggaran terhadap ketentuan Pasal 7 ayat (1) dikenakan sanksi administrasi berupa pencabutan Sertifikat Penggunaan Batikmark oleh Balai Besar Kerajinan dan Batik Yogyakarta;
(2) Perusahaan yang menggunakan Batikmark tanpa hak, dikenakan sanksi sesuai dengan peraturan perundang-undangan yang berlaku.

Pasal 13

Pengaturan teknis lebih lanjut penggunaan Batikmark "batik INDONESIA" ditetapkan oleh Direktur Jenderal Industri Kecil dan Menengah.

Pasal 14

Peraturan Menteri ini berlaku sejak tanggal ditetapkan.

Agar setiap orang mengetahuinya, memerintahkan pengumuman Peraturan Menteri Perindustrian ini dengan penempatannya dalam Berita Negara Republik Indonesia

Ditetapkan di Jakarta
Pada tanggal 18 September 2007

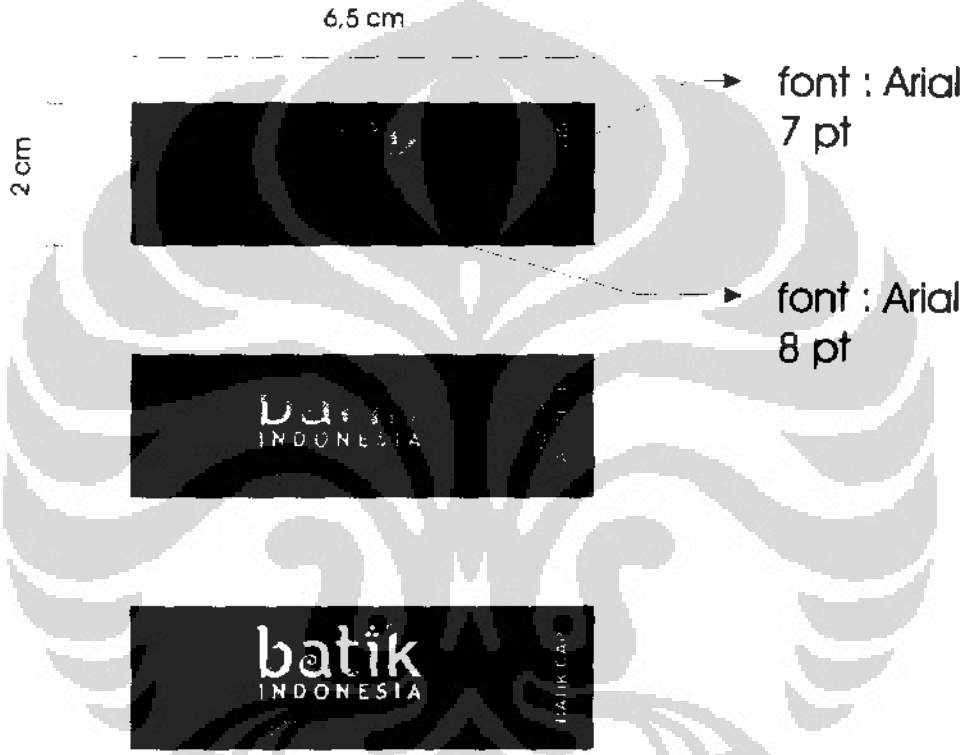
MENTERI PERINDUSTRIAN RI

FAHMI IDRIS

Peraturan Menteri Perindustrian RI
Nomor : 74/M-IND/PER/9/2007

LAMPIRAN I PERATURAN MENTERI PERINDUSTRIAN RI
NOMOR : 74/M-IND/PER/9/2007
TANGGAL : 18 September 2007

BENTUK DAN SKALA UKURAN BATIKMARK



MENTERI PERINDUSTRIAN RI

FAHMI IDRIS

Peraturan Menteri Perindustrian RI
Nomor : 74/M-IND/PER/9/2007

LAMPIRAN II PERATURAN MENTERI PERINDUSTRIAN RI
NOMOR : 74/M-IND/PER/9/2007
TANGGAL : 18 September 2007

STANDAR NASIONAL INDONESIA (SNI) YANG DIJADIKAN ACUAN

No.	SNI	Contoh Uji
1.	08-4088-1996	Batik Rayon
2.	08-4039-1996	Batik Sutera
3.	08-0893-1989	Ukuran Produk batik
4.	08-0453-1989	Ciri Kain Batik Tulis
5.	08-3530-1989	Ciri Batik tulis
6.	08-3531-1989	Ciri Batik Cap
7.	08-0515-1989	Ciri Batik Kombinasi
8.	08-0513-1989	Cara Uji Batik Tulis
9.	08-0514-1989	Cara Uji Batik cap
10.	08-0516-1989	Cara Uji Batik Kombinasi
11.	08-0633-1996	Batik Cap Mori Primissima
12.	08-0634-1996	Batik Cap Mori Prima
13.	08-0537-1996	Batik Kombinasi Mori Primissima
14.	08-0455-1989	Batik Tulis Mori Primisima
15.	08-0638-1996	Batik Kombinasi Mori Prima
16.	08-0454-1989	Batik Tulis Mori Prima
17.	08-0634-1996	Batik Cap Mori Prima
18.	08-0638-1996	Batik Kombinasi Mori Prima
19.	08-0630-1989	Batik Tulis Mori Voalisima
20.	08-0632-1989	Batik Cap Mori Voalisima
21.	08-0636-1989	Batik Kombinasi Mori Voalisima

MENTERI PERINDUSTRIAN RI

FAISAL IDRIS

LAMPIRAN III PERATURAN MENTERI PERINDUSTRIAN RI
NOMOR : 74/M-IND/PER/9/2007
TANGGAL : 18 September 2007

FORMAT LAPORAN PENGGUNAAN BATIKMARK PER SEMESTER

Nama Perusahaan :

Alamat :

NO.	JENIS PRODUK	JUMLAH	KETERANGAN

.... 2007

(.....)

MENTERI PERINDUSTRIAN RI

FAHMI IDRIS