CULTURAL CONFLICT AND RESOLUTION BETWEEN INDONESIA AND MALAYSIA: THE GOVERNMENT EFFORT TO RESPOND BATIK CLIMED BY MALAYSIA IN 2009

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THESIS ADVISER

RECOMMENDATION LETTER

This thesis entitled “Cultural Conflict and Resolution between Indonesia and Malaysia: The Government effort to respond Batik claimed by Malaysia in 2009” prepared and submitted by Rahmawati Abd.Rahman in partial fulfillment of the requirements for the degree of Bachelor in the Faculty of Business and International Relations has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. I therefore recommend this thesis for Oral Defense.

Cikarang, Indonesia, _________________

Name and signature of Adviser

________________________________________

Dr Muhammad AS Hikam
DECLARATION OF ORIGINALITY

I declare that this thesis, entitled — Cultural Conflict and Resolution between Indonesia and Malaysia: The Government effort to respond Batik claimed by Malaysia in 2009 — is, to the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, Indonesia, ________________

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The Panel of Examiners declare that the thesis entitled — Cultural Conflict and Resolution between Indonesia and Malaysia: Indonesian Government Effort to Respond Batik Claimed by Malaysia in 2009 that was submitted by Rahmawati Abd.Rahman majoring in International Relations from the Faculty of Business Administration and International Relations was assessed and approved to have passed the Oral Examination on May......................

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ABSTRACT

Rahmawati Abd.Rahman, 016200900031, CULTURAL CONFLICT AND RESOLUTION BETWEEN INDONESIA AND MALAYSIA: THE GOVERNMENT EFFORT TO RESPOND BATIK CLAIMED BY MALAYSIA IN 2009, Advisor: Dr. Mohammad AS Hikam

Indonesia and Malaysia are two countries coming from similar roots, but frequently experience disputes regarding cultural products. Malaysia, in their official cultural site www.malaysia-trulyasia.com claimed several Indonesian cultural products as theirs. The disputes between the two countries are making the relationship deteriorate, considering that there was not just once or twice, the Malaysian claimed Indonesian cultural products, including batik.

The claim on Indonesian batik was caused by the negligence of the government in establishing the law regulating the Copyright of National Cultural Heritage especially in “Intangible Cultural Heritage”. The government needs to regulate and review the Law of Copyright on folklore so that it can function optionally to protect the folklore and to prevent any cultural product claim in the future.

Indonesia went through mediation to solve the matter of batik claim, by registering batik as intangible cultural heritage to the UNESCO. By collecting documents related with batik, whether regulations, stories and documents of batik handcrafting.

**Keywords:** claim of batik culture, indigenous knowledge, Government Effort, Batik Mediation at the UNESCO.
ABSTRAK

Indonesia dan Malaysia adalah negara serumpun yang kerap terlibat perseteruan dalam hal kebudayaan. Malaysia beberapa kali terlihat dalam situs resminya kebudayaannya www.malaysia-trulyasia.com menuliskan kebudayaan yang merupakan kebudayaan bangsa Indonesia sebagai kebudayaan milik mereka. Perseteruan antara kedua negara membuat hubungan antara kedua negara semakin memanas, mengingat tidak hanya satu atau dua kebudayaan Indonesia yang di klaim oleh Malaysia, termasuk batik.

Klaim budaya batik Indonesia oleh negara Malaysia ini di akibatkan oleh kelalaian pemerintah atas nilai hukum yang mengatur Hak Cipta kebudayaan Nasional khususnya dalam hal “Intangible Cultural Heritage”. Pemerintah perlu mengatur dan mengkaji ulang UU Hak Cipta mengenai kebudayaan folklore sehingga dapat berfungsi secara optimal untuk melindungi kebudayaan folklore dan untuk mencegah klaim budaya pada masa yang akan datang.

Indonesia menempuh jalur mediasi untuk menyelesaikan permasalahan klaim Batik, dengan mendaftarkan batik sebagai warisan budaya tak benda (intangible cultural heritage) kepada UNESCO. Dengan mengumpulkan dokumen yang berhubungan dengan batik, baik dari peraturan, dan cerita mengenai batik, dan dokumen pembuatan batik.

Kata kunci : klaim budaya batik, warisan budaya, Kebijakan Pemerintah, Mediasi Batik di UNESCO
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GLOSSARY

ASEAN = Association of South East Asian Nations

EPG = Eminent Persons Group

Folklore = The term of Intangible Cultural Heritage

IGC GRTKF = In Governmental Circuit Committee On Intelectual Property and Genetic Resources, Traditional Knowledge and Folklore

UN = United Nations

UNESCO = United Nations Educational Scientific and Cultural Organization

WIPO = World Intellectual Property Organization

PPKI PTEBT = Perlindungan dan Pemanfaatan Kekayaan intelektual Pengetahuan Tradisional dan Ekspresi Budaya Tradisional

RPP = Rencana Pelaksanaan Pembelajaran
CHAPTER I

INTRODUCTION

I.1. Background of the study

Culture is an important element because it is the identity of a nation, and is a way of life that is developed and owned jointly by a group of people and passed on from generation to generation. Culture is made up of many complex elements, including religion and political systems, customs, languages, tools, clothing, buildings, and works of art.

Culture can also be interpreted as a comprehensive way of life; culture is complex, abstract, and broad. Many aspects of culture help to define communicative behavior. These socio-cultural elements spread and cover various human social activities. Thus, it is culture that provides a coherent framework for organizing the activities of a person and allows predicting the behavior of others\(^1\).

Indonesian culture can also be defined as the unique characteristics of an area that existed prior to the formation of Indonesian nationality, which includes the whole culture of the whole range of local tribes in Indonesia.

In this era of globalization there is a shift in culture; indigenous cultural identity is forgotten because it has to compete with the national project. Moreover with the process of peoples’ migration out of the borders of Indonesia which make it easy for
culture to be developed outside Indonesia. Such event makes it easy for certain culture to be adopted by other nations. Such is the cultural conflicts that occur between Indonesia and Malaysia, in the dispute on *batik* it can be triggered by the migration of people.

*Batik*, which is an Indonesian cultural heritage, has embedded in the daily life of the people of Indonesia. *Batik* is used in various occasions and levels. Malaysia’s claim on *batik* has awakened Indonesia, the importance of protecting cultural heritage of Indonesia.

The claim made by Malaysia on Indonesia’s cultural heritage did not happen just this once, and it has attracted so many contempt and anger against Malaysia. The increasingly strained relation between the two countries continues, Indonesian public speaks out their opinions throughout various websites and blogs invites the attention of the media. Various books also have been published with provocative titles such as *Ganyang Malaysia*² and *Maumu Apa, Malaysia*³.

This thesis will discuss the "Cultural Conflict Resolution" between Indonesia and Malaysia with a case study of *Batik*. How the Indonesian government's tries to defend batik before UNESCO, as the property and cultural heritage of Indonesia. In 2009, Malaysia is considered to have claimed batik which is Indonesia’s cultural heritage. The claim was reinforced by the featuring of *batik* as one of Malaysian cultures in the Malaysian official website.

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I.2. Problem Identification

Cases of cultural heritage plagiarism committed by Malaysia against Indonesia, which results in tremendous protests have forced the government to work even harder to tackle such cultural issue. But how do these cultural heritages Copy Right work? One needs to know that there have been many cultural heritage issues between Indonesia and Malaysia which made Indonesian people very disturbed.

There are at least ten Indonesian cultural heritages which have been claimed by Malaysian: Reog Ponorogo, Rasa Sayange song, Shadow Puppet, Rendang Padang, Keris, Angklung, Javanese Gamelan, tari Piring and tari Pendet, and the case will be investigated in this thesis is batik. Such issue was once so heavily discussed and ultimately was mediated by UNESCO.

Various criticisms by Indonesian society against Malaysia did not make a way out of this problem. UNESCO as one of the UN’s special bodies has been trusted by the Indonesian government to help out in solving batik claim between Indonesia and Malaysia. It was also because cultural heritage issues between Indonesia and Malaysia have often occurred before. It was time for the Indonesian government to take the case to a higher stage of mediation with UNESCO, in order to obtain recognition of batik as Indonesia's cultural heritage from the world.

In this study, the object of study itself is the policy that has been taken by the Indonesian government in dealing with the claim batik by the Malaysian. The reason why this study concentrates on the problem of cultural heritage claim is due to the frequent dispute between Malaysia and Indonesia, therefore the purpose of this study
is to determine how the government protects the cultural heritage or copyright such cultural heritage so that other countries can easily adopt Indonesian culture, for example the case will be studied is the claim on *batik*.

**I.3. Statement of the Problem**

This thesis is examining Indonesia’s policy in answering and resolving the indigenous knowledge conflict. Based on what have identified above, the statement of problem of this research is as the following:

“How the Indonesian government effort, in protecting batik as Indonesia’s cultural heritage against the claim made by the Malaysian for *batik* in year 2009?”

The period taken from the time *batik* case was reported to UNESCO, and will be described as well the government regulations relating to the preservation of the art of *batik* in Indonesia, and also the historical evidence and history of *batik* which can support batik as Indonesian belonging.

**I.4. Research Objective**

This claim case invites analysis from various angles. This case is suitable for study both as a phenomenon of media-communications, a political stunt manipulated by the opposition parties as well as a cultural phenomenon, but in this thesis the research will focus on the study of international relations.

The main objectives of this research are:
a. What are the government’s efforts to deal with the case of claim on *batik*, and protect the Indonesian traditional art of *batik*?

b. Is protection on folklore sufficient enough in Indonesia?

c. How are the government’s efforts in protecting the copyright of *batik* art?

I.5. Significance of the Study

This thesis has several key areas or points of study that hopefully can give contributions both theoretically and practically, and is expected to provide an additional contribution to the main points of interest for both practical and theoretical interest are as follows:

1. Practical benefits

This study is expected to bring results as input for the parties concerned and the protection of copyright and ownership of *batik* by Indonesia. Hopefully the results of this study can be useful for actors of *batik* to market even wider.

2. Theoretical benefits

This research is expected to contribute ideas for science, especially for the International Relations Major. Especially in the field of culture of Indonesia or the Intellectual Property and copyright of *batik* as one of the government's efforts to preserve *batik*, so as to contribute in giving an idea on how the protection over the art of *batik* works.
1.6 Theoretical Framework

Theories of International Relations that will support this research are those derived from the Liberal perspective. Liberalism in International Relations is closely associated with the emergence of the modern liberal state. The discussion of this thesis will be supported by the liberal perspective that has a positive view of human nature. It recognizes that people are always selfish and competing against something. But they also have great confidence to the human mind and the rational principles that without having to go through the war, their interests can still be achieved by cooperating. So the liberals believe that the human mind can overcome fear and lust for power (Jackson & Sorensen, 1999: 141).

International Relations is a system of relations between countries sovereign in international relations which makes diplomacy activities as a major element for a country of its existence as a determining factor in international relations. Diplomacy is a political process to maintain the foreign policy of a government in influencing government policy and the attitude of other countries. In this era Diplomacy is not only about political activity, but also multidimensional concerning the economic, social, cultural, human rights and the environment that is used in any situation in the relations between nations for peace in the global political arena as well as achieving a given country's national interests.

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This thesis employs the soft power perspective. The emergence of soft power as a form of power than hard power in the activities of international relation has implication on the conduct of diplomacy. Today soft power becomes the main tool of diplomacy called soft diplomacy. The tendency of the implementation of soft diplomacy by using the application of soft power is considered effective and efficient making it easy to implement without having to take its toll and at great expense. The changing paradigm of international relations actors, implementation of soft diplomacy involving various groups non-government actors. Therefore, "platform" of foreign policy through soft diplomacy this has been undertaken by Indonesia in addressing the case of batik claim. Indonesia went through diplomatic system such as mediation, involving UNESCO and collecting facts related to batik. The evidence was the force for Indonesia to defend their culture. Indonesia defended without resorting to violence or war against Malaysia. UNESCO can be said acted as a mediator in the mediation undertaken by Indonesia while collecting evidences of ownership to UNESCO for recognition of batik before it was declared that batik is truly Indonesia’s in 2009.

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I.7. Scope and Limitation of the Study

The scope and limitation in this study is the year the policy taken by the Indonesian government in dealing with cultural conflicts. The time frame is during the year 2009. The reason is because at that time considerable cultural conflict arises due to protests against the claim made by Malaysia on a cultural heritage quite known as the Indonesian national identity. The claim then involved UNESCO to help mediated and then finally declared *batik* as one of Indonesia's cultural heritages.

I.8. Definition of Terms

There are three (4) basic keywords that will be frequently used, namely:

a. Government, in this case the Indonesian government. How does the government protect and maintain the Indonesian culture, the entire people of Indonesia should have a role, either from the government or the community itself.

b. Government effort, in this case the government regulations in supporting the culture in particular. In terms of development, patent, to the recognition of *batik* as property and cultural heritage of Indonesia.

c. Folklore, is human culture (collective) that are passed from generation to generation, whether verbally or gestures, for example in this thesis is *batik*. Folklore

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7 Just my country blog, peran pemerintah dan masyarakat dalam menjaga kebudayaan Indonesia 15/01/2013 http://zeculture.blogspot.com/2010/03/peran-pemerintah-dan-masyarakat-dalam.html
can also be interpreted as traditional customs and stories passed down from generation to generation, which are not recorded.\footnote{Kebudayaan dan Kesenian Indonesia, Ahmad Fajar, selasa 12/6/2012 \url{http://kebudayaankesenianindonesia.blogspot.com/2012/06/folklor.html}}

d. UNESCO is the United Nations specialized agency established in 1945. Purpose of the organization is to support peace and security by promoting collaboration among nations through education, science, and culture in order to improve the basis of mutual respect for justice, the rule of law, human rights and fundamental freedoms.\footnote{Wikipedia.com: \url{http://id.wikipedia.org/wiki/Organisasi_Pendidikan,_Keilmuan,_dan_Kebudayaan_PBB}}

### I.9. Structure of the Thesis

This thesis will be divided into five chapters. The first chapter is the introduction. This chapter is introducing the beginning history of the topic. Includes the background of study, problem identification, statement of the problem, research objectives, significance of the study, theoretical framework, scope and limitation, structure of research and the last is definition of terms.

Chapter 2 in this thesis will discuss the theoretical framework. Where will be clearly discussed the background and foundation theories in use to strengthen this study. Theory will be described is the theory in liberalism perspective, which is soft power theory. Soft power theory in use in resolving this case will also be more focused on the soft power diplomacy which will further strengthen the research.

The third chapter of this thesis will discuss the method describing the research done by the system of qualitative methods. Explaining the research’s time and place,
the research method used in this study and data collection and interviews that will help the authors in formulating this thesis.

Chapter 4 in this thesis will discuss Analyzed and Interpretation which will focus on the data that have been collected. Explaining the history of batik culture, and government regulations that favor batik as Indonesia's culture, how far the government's efforts in addressing the problem via the government’s policies in dealing with the case of claim undertaken by Malaysia.

Chapter 5 is the last chapter which will discuss the conclusion of this thesis.
II.1 The Liberal Perspective

Liberalism is a perspective in international relations that can be said to be the opposite of Realism. If you look at the human realism in terms of negative and pessimistic attitude towards international interactions, then liberalism is the opposite. Liberalism views human beings in terms of positive and optimistic in the interaction between countries. However, liberalism agrees with the realism view that individuals are selfish, competing to win their respective interests. However, the difference is in the way of achievement.

There are five basic characteristics of liberalism. The first, that man is always seen as being positive, man is basically good and loves company (cooperation) rather than looking for opponents. The second, believing in the possibility of progress in international relations. Then a further characteristic is, that the state is controlled by the individual. This means, if the behavior of the state in the domestic sphere is good, the behavior in the international sphere will also be good. The next one is by increasing interdependence (cooperation), the conflict can be minimized. And the last characteristic is that people are basically good and capable of positive thinking. It is similar to the first characteristics.
Of the five characteristic mentioned above, it can be concluded that the main agenda of liberalism is peace, and cooperation. Such as stated by David Mitrany, that the countries of the world can work together to create world peace (Mitrany, 1993). At the beginning of the development of liberalism, liberals assume peace can be implemented through three things. First, peace can be spread through trade and free markets. Second, the conflict is not due to human nature but because due to the absence of rules, norms, and international legal work to create a society of international law. Third, peace can be maintained in the context of the world when there is a legitimate government to regulate and monitor international norms to be followed.

Liberalism is a very broad perspective. This study will use the perspective Liberalism theory, namely soft diplomacy. Soft diplomacy which is main tools of soft power. In case of Indonesian batik claims by the Malaysian government Indonesia used mediation approach to defending batik as Indonesian nation in front of UNESCO. Mediation approach taken by Indonesia government to resolving batik dispute it can be viewed as a form implementation of soft diplomacy. In the case of batik claim, Indonesia had conducted mediation with UNESCO as a mediator to collect documentation of batik and the government regulation related to batik as a intangible cultural heritage from Indonesian ancestor which can be viewed also as a form of soft power to defend batik as Indonesian culture.

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10 Journal Theory of International Relation, Mentari Rasfi
II.2 Soft Power

According to Nye, power is the ability to affect others to get the desired results. Nye classify power spectrum in two different behaviors, the power in spectrum of behavior *command power*, i.e. the ability to change what others do and soft power in the spectrum of *co-operative power* behavior, which is the ability to influence and formed what others want.

Nye's soft power is then defined as the power or ability to affect others to get the desired result (power) through use of the attraction rather than the use of force (coercion) or compensation (payment).

In international relations, the national interest is a fundamental goal and the final factor that directs the decision makers in the formulation of a country's foreign policy. To achieve the national interest, each country conducts diplomacy. Diplomacy activities carried out by advancing elements of soft power which is owned by a country that is through soft diplomacy. The emergence of the tendency of the use of soft power diplomacy is also supported by the rapid advancement of information technology in the era of globalization.

The efforts of a nation in defining itself both to its own people and the international community by highlighting the benefits of cultural values it possesses

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12 Ibid
with the aim of creating an international influence is indispensable to the achievement of foreign policy and diplomacy in general\textsuperscript{16}.

Culture is considered as one of the major sources of soft power, because it has the power of attraction. Therefore, the Indonesian government used soft power itself in terms of historical and government regulations about intangible cultural heritage to resolve claims case \textit{batik}. Soft power mentioned here can be interpreted in two elements, the first is about Indonesian mediation approach to solving \textit{batik} claim, and the second is the power source of the Indonesian state itself which refers to evidence of \textit{batik}. After Indonesia answer the claim made by Malaysia since 2008, the government has conducted field research and engaged communities and \textit{batik} experts in 19 provinces in Indonesia to nominate \textit{batik} as intangible cultural heritage of humanity by UNESCO\textsuperscript{17}.

Elements of the history and uniqueness of the Indonesian \textit{batik} which has a way of making and story or meaning behind its feature makes a force for Indonesia in winning this \textit{batik} claim case. UNESCO assessed \textit{batik} as an icon that has a unique culture and symbols which covers a deep philosophy of the human life cycle. Not only is \textit{batik} considered as cultural origin of Indonesia, but \textit{batik} is also recognized as a representation of the intangible cultural heritage of humanity\textsuperscript{18}. The Indonesian protection at \textit{batik} ownership was to exert their soft power and register \textit{batik} to

\begin{flushright}
\textsuperscript{16} Aleksius Jemadu. \textit{Op.Cit.} Hal.120
\textsuperscript{17} ANTARANEWS.com: UNESCO Setujui Batik Sebagai Warisan Budaya Indonesia, Senin, 7 September 2009
\textsuperscript{18} ANTARANEWS.com: UNESCO Setujui Batik Sebagai Warisan Budaya Indonesia, Senin, 7 September 2009
\end{flushright}
UNESCO as Indonesia's cultural heritage through *batik* documentary evidence and then to conduct a mediation with UNESCO as form implementation of the concept from soft diplomacy because mediation is part of the soft diplomacy.

### II.2.1 Soft Power Diplomacy

*Soft diplomacy* is a form of diplomacy undertaken by applying the use of the *soft power* of a country. The emergence of *soft power* as a form of *power* other than *hard power* in international relations activities has implications on the conduct of diplomacy. *Soft power* becomes the main tool of diplomacy of today’s *soft diplomacy*. The tendency of the implementation of *soft diplomacy* by using *soft power* is considered effective and efficient because it does not harm the other country and do not use violence and to do without having to take its toll. The emergence of the tendency of the use of *soft power* in diplomacy is also supported by the rapid advancement of information technology in the era of globalization. Soft power done by the Indonesia, in the case of *batik* claim by the Malaysian is a form of defense diplomacy handled by using mediation as a path of diplomacy of soft power itself.

Implementation of soft diplomacy is not only because of the political process but also can be translated into economic or cultural benefits as well as the Indonesian government's efforts in this case of *batik* claim. Susanto Pudjomartono a former Russian ambassador of Indonesia said that soft diplomacy is defined as the exchange of ideas, information, art and other cultural aspects of the country and the nation, in

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the hope of creating a shared understanding. In this thesis, the exchange of artistic values meant is the information of batik proprietary as the Indonesian, to be examined by the UNESCO thus to be recognized, not only by Malaysia but also by the world.
CHAPTER III

METHODOLOGY

III.1 Research Methodology

This thesis will be using qualitative method in order to answer the question on conflict resolution between Indonesia and Malaysia, without needing quantitative method which analyzes using numerical data. Qualitative method is a research method using Inductive and Deductive approaches, meaning that this research went from the theoretical framework, ideas from expert, and understanding of the researcher, and then elaborated into issues and solutions, collected based on the data obtained.

III.1.1 Qualitative Method

This thesis uses qualitative method in order to explain more about the fact end evidences at the present and that have been taken and how they could happen. The thesis also aims to understand the information and regulation about folklore such Indonesian batik culture as intangible cultural heritage.

The data are analyzed from books, journal, media, end observation. The writer analyze the data by enriching information, finding relation, comparing, finding pattern based on the original data (not transformed into numerical). The result of data analysis shall be an exposition on the situation studied and presented in form of
narrative description. The exposition of data generally answers the question of why and how a phenomenon took place. Therefore to elaborate the case studied, one is demanded to have quite an understanding on the field of study to give such justification on the concept and meaning obtained in the data.

As we all know, qualitative method is positioned under the umbrella of interpretative paradigm or phenomenology using the tradition of social sciences, especially sociology and anthropology, started by a group of sociologists from Chicago school in the era of 1920 – 1930, as epistemological foundation. The reason why this method is used in this research is to make it easier in formulating the available facts, by collecting data from sources obtained regarding the case of claim on batik by Malaysia.

This thesis will discuss how the Indonesian government reacted in managing the claim made by the Malaysian on batik. This thesis is supported by theories and evidences obtained, related with Indonesian’s batik. The writer hopes that this research can contribute to the reader in understanding the cultural conflict, and as an object of study for fellow students or government, so that in the future more attention will be given to cultural heritages as very important element of the nation’s identity.
III.2 Research Scope

This thesis shall elaborate the “Cultural conflict and resolution between Indonesia and Malaysia in case batik dispute in 2009”. It started 3 September 2008 until May 2009 where the UNESCO finally declared batik as Indonesian.

The period is limited from the time the Indonesian government filed the case to UNESCO in 2009, this is to make it easier in collecting the data and information about the case review, also to make it easier for the reader in understanding the data more clearly.

This thesis is conducted in Jakarta, Indonesia. The data are collected from books, journals and websites. All data will support this research in showing the performance of Indonesian government in protecting the copyright of batik. How the Indonesian government proposed the evidences to the UNESCO and what was the final result of such effort made by the Indonesian government in defending batik. As supporting data, will be elaborated also the history of batik art and government regulations related with batik which is intangible cultural heritage.

III.3 Data Collection

This part explains the procedure, tools and instruments used in collecting and analyzing the data. The literatures collected are coming from newspaper, books, journals, and the library (Adam Kurniawan’s library, Perpustakaan Nasional, Perpustakaan Lontar Universitas Indonesia).
This thesis also uses data from the internet, such as articles related with the claim of *batik* done by the Malaysian and websites providing insights and information about the performance and steps taken by the government in addressing the case, also additional information about the basis of thought used in the thesis.

**III.4 Thesis Setting**

This thesis will mention the performance of the government that focus on the performance of the Indonesian government in defending *batik* as Indonesia’s. The reason why this study focuses on the performance of government and government regulations concerning ownership of *batik* is because *batik* culture is a culture that has long been inherited from generation to generation in Indonesia. By artisans *batik’s* unique motifs and type are considered as the nation's valuable cultural heritage, but Indonesia had to receive claim from Malaysia.

Indonesia who owns *batik* motifs and patterns have varying laws in favor of batik as intellectual property which authenticity has to be preserved. Such thing should be understood so that *batik* in Indonesia can be maintained and expanded rapidly in its development.

The evidence supporting *batik* is recognized by the public, thus the people should know *batik* as one of the cultural heritage of Indonesia which is also nationally. *Batik* also can contribute fully to the cultural diversity known in the eyes of the world by way of the government submitting evidence to the UNESCO for the
inauguration of batik to Indonesia. Which finally on the 2nd of October 2009, UNESCO recognized batik as an Indonesian cultural heritage and world class intangible cultural heritage.

III.5 Data Analysis

Data analysis is a body of methods that helps to describe facts, to detect patterns, to develop explanations, and to test hypotheses. It is used in all of the sciences. It is used in business, in administration, and in policy. In this regard, the data analysis is absolutely needed to be connected to the case.

III.5.1 The Process of Qualitative Data Analysis

The thesis uses qualitative method based on the acquired data. Qualitative research used as an umbrella term as research strategy with the following characteristics:

• The thesis data is soft data, included description of history, conflict, regulation, and completion of the conflict.

• Data collected from the natural background, the background is real.  

Besides that, qualitative method has its own way for the writer to collect data. The writer can give flexible question and be able to make or provide his/her own view on things or phenomenas.

III.5.2 Interpretation on Data

Interpretation is a result that is used in this study with a more social media interaction approach. In other words, it is like the human actions that can be seen as a meaning, for instance. The result of the data collecting is an interpretative approach. The theory used in the thesis is Liberalism in International Relations such as Soft Power and Soft Power Diplomacy that connected to the role of Indonesian government for batik case. The Government Policy is becoming a real interpretative result in an effective analysis in this thesis.
CHAPTER IV
CULTURAL CONFLICT AND RESOLUTION BETWEEN INDONESIA AND MALAYSIA: INDONESIAN GOVERNMENT EFFORT TO RESPON BATIK CLIMED BY MALAYSIA

IV.1 Batik Conflict between Indonesia and Malaysia

The relationship between Indonesia and Malaysia has its ups and downs. As neighboring countries, even often said coming from the same root, the potency of conflict between the two countries is quite big.\(^{23}\) One example of cooperation between the two countries was in 1970, when Indonesian teachers were sent to Malaysia as educators for Malaysian students, in fields of science and math.\(^{24}\) With the progress in Malaysia, and the declining of Indonesian reputation in education, what we heard now is the rising conflict between the two countries. Many conflicts concerning cultural heritage were heard between Indonesia and Malaysia. Since the beginning of 2000, Indonesia was shocked by the news that Malaysia has introduced batik as Malaysian to many countries.\(^{25}\)

\(^{23}\) Wikipedia: relation between Indonesia and Malaysia http://id.wikipedia.org/wiki/Hubungan_Indonesia_dengan_Malaysia


Indonesia is a country with very vast in land and consists of thousands of islands, tribes and cultures. These all resulted in the diversity of amazing cultural products; so many cultural artifacts are contained in Indonesia, from dances, ornaments, clothing motifs, folklores, music and songs, culinary, stage art and architectures. According to Radhar Panca Dahana in *Republika online* dated 19 August 2009, the claim made on Indonesian culture by Malaysia is a reflection of Indonesia activities in claiming others’ culture for promotion and that it is the Indonesian peoples who never pay any attention to their own cultural heritages. While Malaysia needs a cultural existence, as culture is the best weapon for international diplomacy.\(^{26}\) The claim of *batik* made by Malaysia irritated *batik* artists in Indonesia, a *batik* craftsman, Romi Oktabirawa, in the establishment of *Forum Masyarakat Batik Indonesia* in Jakarta said that “the past generation of batik only saw competition between craftsmen within the country.”\(^{27}\)

The Malaysian government, via their parliament member, Salahuddin, in reacting Indonesian accusation regarding batik, said The Malaysian government did not copyright *batik* as theirs; they only copyright certain Malaysian motif, which is different from Indonesian *batik*.\(^{28}\) With the escalating issue, made public by the media, the Indonesian government finally addressed the claim by registering batik to

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\(^{26}\) [http://www.republikaonline.com/berita/Malaysia_klaim_tari_pendet_bali](http://www.republikaonline.com/berita/Malaysia_klaim_tari_pendet_bali).(accessed on 21-01-13)

\(^{27}\) [Several claim made by Malaysia on Indonesia’s culture](http://ferdinand-hegemur.blogspot.com/2012/06/klaim-malaysia-terhadap-beberapa-budaya.html)

the UNESCO in 3 September 2008, as the first step of nomination process. It was officially accepted by the UNESCO in 9 January 2009. The UNESCO then conducted a closed examination in Paris from 11-14 May 2009. As the result, in 2 October 2009, the UNESCO established batik as Indonesian cultural heritage.

IV.2 Batik Art and Its Development

IV.2.1 Definition and history of batik

Before discussing the government's effort to preserve batik and batik rights protection, this paper also discussed briefly batik of Indonesia and its development. According Doelah Satosa, batik is a textile product made by using the technique of "dip hurdles" in the design by using wax barrier materials that display the variety of batik ornamentation typical of any ethnic in Indonesia.

According to the standard Industry of Indonesia, batik is a textile material given with color and motif of Indonesia by using wax as barrier. Etymologically, the word “batik” comes from the Javanese, "Amba" meaning wide, wide, fabric, and the "titik" means a point or automatic (making dot), which later evolved into "batik," which

29 www.infospecial.net Malaysia Claimed Batik http://www.infospecial.net/21178/5-pelecehan-malaysia-terhadap-indonesia_2/
means connecting dots to make certain images on broad or wide fabric\(^{33}\). According to Hamzuri *batik* are paintings or drawings on *mori*\(^{34}\) cloth that is made by using a tool called canting\(^{35}\).

Activities of painting or drawing or writing on the mori using canting are called *membatik*. Results of *batik* are *batik* or *batikan* in various motifs have special properties which are owned by the *batik* itself\(^{36}\). Before the recognition of Indonesian batik by UNESCO as a Representative List of the Intangible Cultural Heritage of Humanity, there are differences in the origins of *batik*. Some argue that batik was introduced by immigrant ancestors. Some say that *batik* is originally from Egypt and Persia, therefore *batik* and *batik* decking also known in Thailand, India, Japan, Sri Lanka, and Malaysia\(^{37}\). According to Sulaiman Setyawati *batik* art is not a genuine cultural of Indonesia, but it comes from China. Her opinion is supported by Margaret Medley who examined the ceramic vessels from the Tang Dynasty in China. Coloring to the ceramic by using systems of *batik*, which is using the wax as the color material barrier\(^{38}\). But batik developed in Indonesia is different from those developed in other countries. Each decorative motif or contained on *batik* fabric has a meaning closely

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\(^{34}\) Mori is the cloth as cotton batik material that has a wide range of quality and type. There is a prima cotton, Primisima and polisima. Mori short length not according to the standard for sure, but with the size of a traditional handkerchief on call, which means square handkerchief.

\(^{35}\) Canting as a drawing tool, specifically for writing wax fluid on the cloth to make patterns, capable of describing the most intricate ornamentation in accordance with batik skills. Sources: Barinul Anas et al., *Indonesia Indah: Books to eight (Batik)*, Jakarta: Harapan Kita Foundation, 1980, p. 18.

\(^{36}\) Hamzuri, *Batik Klasik*, cetakan ke -3, Jakarta: Djambatan, 1989. page VI

\(^{37}\) Afrilliana Purba (1), Op. Cit., hal 49 quoting Endik S in Batik Art

\(^{38}\) Dikutip oleh Dewi Yulianti, Op. Cit., page 8-9
connected with its philosophy\textsuperscript{39}. Even according to the dictionary \textit{Van Dale Dutch Nieuw der Nederlandse Taal Handwoordenboek} that was quoted by Dewi Yulianti, the word \textit{batikken} is the way Indonesian color and dye cloth. The product of the activities \textit{battiken} is called batik. Based on such understanding the Dutch recognized that batik is a native Indonesian culture\textsuperscript{40}.

\section*{IV.3 Indonesian Government Effort to Protection of folklore batik motifs as Cultural Heritage}

The uniqueness of a work of art lies in \textit{batik} motifs contained therein. Motif plays an important role in making a \textit{batik}. \textit{Batik} in Indonesia has a wide range of decoration and motifs. Decorative \textit{batik} is declared a state of self-expression of the creator. As a result the ornamental culture can undergo changes as influenced by the geography, culture and social norms evolved\textsuperscript{41}. Decorative \textit{batik} is declared a state of self-expression and the creator, in which a person or group may reflect imagination and ideals. Such ornamental are used constantly and becomes a habit then becomes a tradition\textsuperscript{42}.

According to the UNESCO cultural heritage is not just a monument or a collection of objects, but the tradition or expression inherited by ancestors and passed down to the next generation such as oral traditions, performing arts, social practices.

\textsuperscript{39} Hamzi, Op.Cit., page . 10
\textsuperscript{40} Dewi Yulianti, Loc. Cit.
\textsuperscript{41} Masisiwo Setya Rehastiwi and Murty, "Batik past the limits of space and time (character shapes, fuksi, and the meaning of batik from traditional to modern life without losing the essence of batik cultural entity, the Foundation Kaldin. Ibid., page. 44th
\textsuperscript{42} Anas, Barinul dkk. Op. Cit, page. 5
rituals, celebrations, knowledge and practices concerning nature of the universe or the knowledge and skills to produce traditional crafts\textsuperscript{43}. According to the UNESCO heritage is not limited to the cultural tangible objects but also intangible items or the terms used by UNESCO is as an \textit{intangible cultural heritage}. Based on the Convention for the Safeguarding of the Intangible cultural heritage ratified by the President of the Republic of Indonesia Number 78 year 2007 on July 5th 2007, those included as cultural heritage objects are a tradition of oral expressions, including language as a vehicle of intangible cultural heritage, performing arts , customs, rituals, and ceremonies, and knowledge of nature and the universe and traditional craft skills. \textit{Batik} is a traditional handicraft and is a culture inherited from generation to generation.

Motifs made in \textit{batik} art have meanings. The motifs used in \textit{batik} are intentional. During the time of the kingdom or palace of Yogyakarta, \textit{batik} is used by the high court and the courtier, even used for religious rituals. In these rituals certain meaningful \textit{batik} motives\textsuperscript{44} were used. The Motifs in \textit{batik} are exactly the outcome of creation, feeling, and intention of Indonesian peoples from generation to generation. Those \textit{batik} motifs are categorized as folklore.

Protection on folklore is set in Article 10 paragraph (2) and (3) of Law No. 19 Year 2002 on Copyright, that the State holds the copyright in folklore and the

\begin{footnotesize}
\textsuperscript{43} What is Intangible Cultural Heritage?," \url{http://www.unesco.org/culture/ich/index.php?lg=en&pg=00002}, di akses tgl 18 October 2012

\textsuperscript{44} Ibid.
\end{footnotesize}
peoples’ cultural products which belong to the people and publishes or reproduces the creation of such, any non-Indonesian citizens must obtain prior permission from the institutions involved in the matter. Folklore explanations are contained in Article 10 paragraph (2):

"A collection of traditional creation, whether made by a group of people or an individual, showing one's social and cultural identity, based on standard and values spoken or followed from generation to generation, including:

a. Folklore, poem;

b. Traditional songs and national instrumentalia;

c. Traditional dancing, games;

Works of art in forms of painting, drawing, sculpture, handicraft, clothing, musical instrument and traditional weaving.

Protection on folklore in Indonesia as stated in article of 10 Copyright Act No. 19 year 2002 is to prevent monopolistic practices or commercialization as well as measures to destroy or commercial use without the permission of the Republic of Indonesia as the Copyright holder. This is to prevent foreign actions that could damage the value of Indonesian traditional culture. The Copyright Act was also set up to protect the Indonesian traditional culture against foreign commercial use without the permission of the government as the Copyright holder. In Article 10 paragraph (3) it is stated that the protection of folklore is to prohibit foreign or non-

45 See General Explanation of article 10 UU Number 19 year 2002 on Copyright.
46 Afrillyanna Purba (1), OP. Cit., pg. 100.
Indonesian citizens to publish or reproduce the folklore and Indonesia cultural products without the permission of the relevant agencies. But until now the agency is yet to be appointed. According to Article 10 paragraph (4) Copyright Act number 19 year 2002, it should be set out further about the Copyright held by the government through state regulation. But until now such government regulation is yet to be published, therefore article 10 is yet to be implemented.

In the past few years there were many cases concerning claims on Indonesian cultural heritage by Malaysia. In 2006 the Malaysian government claimed *parang* motif batik from Yogyakarta as part of their culture\(^4^7\). Followed by the song *Rasa Sayang-Sayange* which is a folk song from Maluku, used by the Malaysian Ministry of Tourism to promote tourism in Malaysia\(^4^8\).

It is undeniable that the recognition of UNESCO's on *batik* gives a positive impact. *Batik* does not develop only on the island of Java, but also outside the island of Java, such as Sumatra, Sulawesi, even Papua. Each region creates and develops batik enriched with their local cultural identity. *Batik* patterns created become very diverse and showing the uniqueness of each region. Thus it can be said that batik is an identity that presented one of the many Indonesian cultural heritage\(^4^9\). But the diplomatic settlement between the two countries and UNESCO recognition is still not

\(^4^7\) “klaim Malaysia,” Tempo interactive.  
\(^4^8\) Igor Diantara, “Hubungan Indonesia Malaysia di Bidang Kebudayaan,” 2 July 2011,  
enough; a legal ground is needed to protect folklore both nationally and internationally.

Copyright has several weaknesses that hinder the protection of traditional works, because in order to get protected, the work must be original and in the form of tangible (fixation). Limited period of protection is also not appropriate for traditional works because most of the works were created a few centuries ago\(^{50}\). To prove the authenticity of folklore is quite difficult because it is usually not in the form of tangible (fixation) but expressed/passed on orally from generation to generation.

Knowledge to create *batik* in Indonesian peoples is a Traditional knowledge. According to WIPO, *traditional knowledge* refers to creations based on the traditional literary works, art or science, performance, investment, scientific discoveries, designs, marks, names, and symbols: confidential information, and all tradition-based innovations and creations which is derived from intellectual activities in industry, science, literature or art\(^{51}\). What is meant by based on tradition are knowledge systems, creations, innovations and cultural expressions that are passed on from generation to generation, and usually associated with a certain community or territory, that is usually developed by non-systematical means and continually evolve in response to environmental changes. If associated with the notion of folklore in the explanation of Article 10 paragraph (2) Copyright Act number 19 year 2002, folklore is one of the traditional knowledge.

\(^{50}\) AusAid dan IASTP II, Intelectual Property Right Hak-Hak Kekayaan Intelektual (elementary), material for Specialised Trining Project-Phase II (Proyek Pelatihan Khusus Bagian II), 2001, pg. 320-321.

\(^{51}\) Cita Citrawinda Priapantja (1), Op, Cit. , pg.119-120
Understanding of the expression of folklore or traditional cultural expressions\(^{52}\) is also available on the *Revised Draft Provisions for the Protection of Traditional Cultural Expression / Expressions of Folklore: Policy Objectives and Core Principles*\(^{53}\), one of the main documents used in the negotiations at the *Intergovernmental circuit Committee On Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC GRTKF)*\(^{54}\). In article 1 the understanding of traditional cultural expressions or expressions is "... *any forms, whether tangible and intangible in which traditional culture and knowledge are Expressed, Appear or are manifested ...*". what includes as traditional cultural expressions or expressions of folklore in the draft include oral expression, musical expression and expression in the form of movement, and traditional cultural expressions in tangible forms like painting products, design, craft products, musical instruments and architectural form. As for the terms of an expression to be included as traditional cultural expression is that, the expression is a product of intellectual activity both individually and collectively and is a hallmark of social identity and community cultural heritage, maintained, used and developed by the community or by individuals who have the right or responsibility to do so in accordance with the laws and customs applicable in those communities.

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\(^{52}\) WIPO has developed an alternative terminology of folklore into Traditional Culture Expression). Since usage of the word folklore often receives critics as it appears to symbolize colonial mentality, underestimating the product produced by local or indigenous. Source: Agus Sarjono, Op. Cit., pg.441.


\(^{54}\) IGC GRTKF is a meeting forum held to seek understanding on the most correct regulation on the protection of Traditional Knowledge and Cultural Expression, including genetics resources on international level.
According to Bari Azed, Folklore or Traditional Cultural expression is the product of a group of individuals or groups of people in which there are public values, consisting of competence and local in nature and also related to the character and value of local customs. Traditional batik motifs have meanings of the surrounding circumstances, symbolism, and even able to show the identity of the wearer. Therefore traditional batik that has been maintained and in use, and inherited from generation to generation by the community is a traditional cultural expressions.

Actually, the issue of Traditional Knowledge and Traditional Cultural Expressions has been the world’s concern since 2001; when the first session of the IGC GRTKF was held in the WIPO headquarter in Geneva, Switzerland, which produced a draft of regulation on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions. The substance of the Traditional Knowledge and Traditional Cultural Expressions also has been a matter of debate in 1967 when Bern Convention for the Protection of Literary and Artistic Works added Article 15.4, stating that the work has not been published and the creator is not known, can be protected as Copyright if it is assumed that the creator was a citizen of the nation at

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56 Perundingan IGC GRTKF up to April 2012 has held courts for 21 sessions since 2001. The 21 meeting IGC GRTKF in Geneva, Swiss, 16-20 April 2012.
the convention. In addition, the state in this Convention is required to appoint competent authorities to provide protection^57.

The issue of traditional knowledge and traditional cultural expressions are also discussed in the framework of WIPO meeting in Doha resulted with *Doha Ministerial Declaration* issued on 14 November 2001. But until now there has been no significant progress in the setting of traditional knowledge and traditional cultural expressions^58. The issue that grows is that in order to protect traditional knowledge, including traditional cultural expressions is done through a separate regime of intellectual property rights regime, the regime which is popular today is *sui generis*^59 regime. Today, the protection of traditional knowledge mainly folklore or traditional cultural expressions through a regime of intellectual property rights is still lacking. This is because the people of Indonesia as the owner does not take into account the economic benefits, and considered traditional knowledge as common property. That providing such traditional knowledge is a policy that will pay later on^60. In traditional art the ethics of sharing is very strong. In the traditional community practices of

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59 *Sui Generis* is a phrase in Latin which means *of its own*. Sui generis system is a system engineered to overcome the needs and concerns on certain issues Peter Jaszi dk, in research “HKI dan Kesenian Tradisional,” available on attachment, Agus Sarjono(2), *Hak Kekayaan Intelektual dan Pengetahuan Tradisional*, second edition, Bandung: PT Alumni, 2010, pg.470.

imitating is a form of respect and not a disgraceful or not approved practice. This idea is of course against the concept of Intellectual Property Rights. This is because the purpose of creating the intellectual property rights is to enable each individual to utilize the products of their intellect thus the right is given as a reward for creativity and spur innovation and invention. In contrast, traditional public opinion or native peoples prioritize the interests of the community as a whole which includes the individual ownership of folklore and indigenous cultures. Intellectual Property Rights regime is a product of developed nations that emphasizes individual and private property so that it is less suitable to be made as a provision to protect traditional knowledge and traditional cultural expressions that are communal in nature, shared in ownership, and passed on down from generation to generation.

According Afrillyana Purba, protection of folklore or traditional cultural expressions in terms of copyright have drawbacks, such as, the requirement of individual creator in the copyright, while in a local community folklores usually do not have individual creator. Copyright Regime is related to commercial aspects of the rights in question within a limited time, while the issue of protection of traditional knowledge is an issue of the protection of the cultural heritage of a particular community related to cultural identity which is permanent in nature.

Currently, the Draft Law on the Protection and Use of Traditional Knowledge Intellectual Property and Traditional Cultural Expressions (Bill of PPKI PTEBT) has

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61 Ibid., Attachment on KHI and traditional art, pg.450.
63 Afrillyana Purba (2), Op.Cit., 318-319
been created and socialized on the 14th September 2011 by the Directorate General of Legislation. PPKI PTEBT bill consists of 12 chapters and 23 articles that set the General Provision, Protection, Documentation, Utilization, Granting and Rejection of Access Utilization Permit, Traditional Knowledge and Traditional Cultural Expressions, the Division of Utilization Result, Cancellation of Utilization Access Permit, Dispute Resolution, Criminal Provisions, Transitional Provisions and Closing. The Traditional Cultural Expressions definition as stated in article 1 paragraph 2 of the PPKI PTEBT Bill is "intellectual work in the form of arts, including literary expression that contains elements of the traditional heritage characteristics produced, developed, and maintained by a community or society".  

While protected traditional cultural expressions is contained in Article 2 paragraph (1) and (3) including cultural elements organized, developed, and transmitted in the tradition and having specific characteristics that is integrated with a particular cultural identity which preserves. In the PPKI PTEBT bill, Traditional Cultural Expressions protected include one or a combination of these forms of expression:

a. Verbal textual, both orally and in writing, in the form of prose and poetry, in a variety of themes and content of message, which can be a literary work or narrative informative:

b. Music, including among others: vocal, instrumental or a combination thereof;

c. Motion, include: dance, martial arts, and games;

d. Theater, among others: the puppet show and theatrical people;

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64 RUU on Protection and Use of Traditional Knowledge Intellectual Property and Traditional Cultural Expressions (RUU PPKI PTEBT), article 1 point 2.
e. Art, whether in the form of two-dimensional and three-dimensional made from various materials such as leather, wood, bamboo, metal, stone, ceramic, paper, textile, and others or combinations thereof, and

f. Ceremonies, which also includes the manufacture of tools and materials, and presentation.

Later on it was also set the scope of protection of Traditional Knowledge and Cultural Expressions including preventive and / or bans on:

a. Utilization without the utilization permissions and utilization agreements by foreigners or foreign legal entity or foreign investment Indonesian legal entities;

b. The use by any person or entity that both foreign and Indonesian in which the implementation of utilization did not clearly indicate the origin of the region and the community or the source of the Traditional Knowledge and Traditional Cultural Expressions, and / or

c. The use by any person or entity whether foreign or Indonesian done improperly, distorted and incorrect, and giving incorrect impression to the people concerned, or that makes the community feel offended, humiliated, disgraced and / or contaminated.

Under the PPKI PTEBT bill the duration of the protection is set, granted if still maintained by the custodian. Custodian here is "the communities or traditional
communities who preserve and develop traditional knowledge and traditional cultural expressions communally” 65.

In this bill there is an obligation for the government to perform data collection and documentation of traditional knowledge and traditional cultural expressions. The purpose of data collection and documentation is to provide information on traditional knowledge and traditional cultural expressions that exist in indigenous communities in Indonesia so that the data can be used as a reference on whatever needs to be protected according to the existing community. Besides, documentation can be made as an attempt to protect against the misuse of traditional knowledge using instruments of Intellectual Property by foreigners. The bill also regulates the access permissions and agreements permit the use of, team of traditional knowledge expert and traditional cultural expressions. Access permissions are not in need for education, research and development of science, reporting solely for the purpose information and charities. The exceptions are made under terms and not meant for commercial purpose, and does not harm the interest of the custodian, by including/mentioning the source, does not distort and give incorrect impression to the people concerned, or to make the community feel offended, humiliated, disgraced and / or contaminated . The PPKI PTEBT bill, apparently trying to follow the List of Core Issues 66 IGC GRTKF

65 RUU on Perlindungan dan Pemanfaatan Kekayaan intelektual Pengetahuan Tradisional dan Ekspresi Budaya Tradisional (RUU PPKI PTEBT), article 1 point 5.
66 As the List of Core obtained from the-11th meeting (3-12 July 2007), IGC GRTKF, are:
1. What is the definition of Ekspresi Budaya Tradisional (EBT)?
2. Who has the right to reap the benefit to become the custodian of Ekspresi Budaya Tradisional (EBT)
3. What is the goal of protection on Ekspresi Budaya Tradisional (EBT) (economy, morale rights)?
which becomes the center of the issue of protection of intellectual Property Rights on traditional knowledge and traditional cultural expressions generated. PPKI PTEBT bill is still in the stage of socialization, for it still takes time for the bill to be legalized. With the PPKI PTEBT bill the setting of Traditional Knowledge and Traditional Culture Expressions is set individually. The bill also set up the permit for access utilization by foreign parties, of course it will be overlapping with the permit utilization by foreigners on folklore as contained in Article 10 paragraph (3) Copyright Act Number 19 year 2002 which implementation regulations as mandated in Article 10 paragraph (4) has not yet been published.

Regulation on the protection of folklore or traditional cultural expressions is still inadequate, because the RPP Copyright held by the state expected to accommodate the protection of folklore will be delayed again to adjust with the bill draft of the new Copyright law. While the regulation of Traditional Knowledge and Traditional Cultural Expressions is still in the stage of socialization.

4. Types of actions considered as violation against the right of custodian of Ekspresi Budaya Tradisional (EBT)?
5. Should there be any exception on the protection of Intellectual Property Right on Ekspresi Budaya Tradisional (EBT)?
6. For how long Intellectual Property Right on Ekspresi Budaya Tradisional (EBT) is granted?
7. How far the protection of modern Intellectual Property Right has been given to a work related to Ekspresi Budaya Tradisional (EBT) be acknowledged? How to overcome any gap?
8. What is the sanction given to violators of Intellectual Property Right on Ekspresi Budaya Tradisional (EBT)?
9. What issues to be managed in international and national level or how to divide the regulations on international and national level?
10. What kind of treatment to be given to custodian of Intellectual Property Right on Ekspresi Budaya Tradisional (EBT) from other country?

IV.3.1 Indonesian Government efforts in rearranging Intellectual Property Rights of Indigenius knowledge in WIPO

World Intellectual Property Organization (WIPO) is an organization having policies related to copyrights all over the world. WIPO also emphasizes the importance of acknowledgement for all inventor or holders of intellectual property. Indonesia is one of 184 countries of members of WIPO. Indonesia already has law for intellectual property, Copyright law (UUHC) year 1982 which was perfected in 1987 and again amended in 2002. The copyright law is not sufficient in protecting the copyright for items coming from traditional knowledge communal in nature, also traditional cultural expression such as batik, songket, traditional motifs and traditional arts. The effort in protecting Batik and other arts which are communal in nature, has been obstructed by the understanding of the meaning of communal culture itself.

Indonesia has suggested that traditional knowledge communal in nature and expression of traditional culture should be protected with intellectual property rights. Indonesia has also drafted the Draft of Traditional Knowledge and Expression of Traditional Culture Law which will complete the copyright law. The law is hoped to provide more protection to traditional knowledge which is communal in nature, also expression of traditional culture, than the UUHC.67

Database is needed to support the application process. Law on sanction is also ready to be made although it will not be easy to impose it in international world. In

67 PERLINDUNGAN HUKUM HAK KEKAYAAN INTELEKTUAL, Antoneye Octaviany
http://ejournal.undip.ac.id/index.php/notarius/article/view/1130
the application of intellectual property right, WIPO has a certain view as if rejecting
the protection of intellectual property right to traditional knowledge and expression of
traditional culture. WIPO was considered permissive when many products of
traditional knowledge and expression of traditional culture from Indonesia were
claimed by other countries. Michael Keplinger as the Deputy Director General
Copyright and Related Rights Sector WIPO said that, intellectual property right
provides protection to the original creator, including handicrafts which are communal
and traditional. "WIPO can help in raising understanding to intellectual property
right, but WIPO has no authority in taking action when there is a violations.
Indonesian governement has to be active in protecting her products of traditional
knowledge and expression of traditional culture. Law number 19 year 2003 on
Copyright (UUHC) is not sufficient in protecting the copyright of traditional
knowledge products which are communal in nature, expression of traditional culture
and traditional arts. The next draft of law will express clearly the issue of oral
cultural expression so that it will reduce the claim for Indonesian culture, so that
cultural claim case such as batik can be fought and cannot be easily claimed by other
countries if there is clear law protecting such cultural expression.

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68 Kompas.com Wednesday, Menanti Tuntasnya Perlindungan HKI, 24 Desember 2008 | 04:09 WIB,
Wisnu Aji Dewabrata http://nasional.kompas.com/read/2008/12/24/04092399/
69 Op. Cit
IV.4 The Government's efforts in the protection of Traditional Indonesian Batik as International Property Right

*Batik* is a handicraft that has high artistic value and has long become part of Indonesian culture. Therefore, batik with its traditional motifs is Indonesia's cultural heritage. On that basis, *batik* needs to be preserved, protected and supported in its development. As a traditional culture that has lasted for generations, the Copyright on batik art will be held by the state as provided in Article 10, paragraph 2 of Law number 19 Year 2002 on Copyright. However, in the implementation of this law is yet to accommodate Copyright protection over traditional batik motifs. So far there are no regulations regarding the implementation of the Copyright Act held by the State, therefore the investment of folklore works are returned to their respective territories. With the absence of implementation regulations, efforts undertaken are limited to documentation that has not been centralized yet.

The process of documentation is not the way to obtain the rights to traditional knowledge but an attempt to simplify the claim that certain traditional knowledge belongs to a particular community. But the documentation is done in the framework of cultural heritage preservation which flourish naturally, which can prove that a particular cultural heritage does originated and became part of the social life of the Indonesian people. The documentation is done on the understanding that cultural expressions / folklore and traditional knowledge do not require registration because they have become common property in Indonesia.
The role of Indonesian government in protecting batik is very important. The effort undertaken today in the field of law is the socialization of the draft of Protection and Use of Traditional Knowledge Intellectual Property and Traditional Cultural Expressions bill (PPKI PPETB Bill). Furthermore, the draft of Law on Copyright (Copyright Bill) is being discussed on. Based on it the RPP Copyright held by the State must wait for the legislation of Copyright Bill into Copyright Law.

Efforts undertaken by the government can be seen when Malaysia claimed the motif of *parang* in *batik* as their cultural product. Settlement taken in overcoming the issue was through diplomatic channels between the Indonesian government and the Malaysian. Diplomatic efforts was taken because both states are a neighboring country and are members of ASEAN. Especially with the establishment of the *Eminent Persons Group* (EPG), which consists of leaders of both countries to formulate and provide input to both head of states, which is considered to provide the best formulation of how the two countries can have a harmonious relationship. The two countries finally agreed to settle the issue with diplomacy.\(^7^0\)

In this *batik* issue, what the Indonesian government wants was the recognition that *batik* is the product of Indonesian culture. Other efforts done by the Indonesian government was registering the cultural heritage to the United Nation Educational, Scientific and Cultural Organization (UNESCO). Finally, on October 2, 2009, *batik* Indonesia is recognized as a UNESCO world heritage in the category of Representative List of the Cultural Intangible Heritage of Humanity, in the Fourth

\(^7^0\) Igor Diantara, *Op. Cit.*
Session of the Intergovernmental Committee on Intangible Cultural Heritage in Abu Dhabi. The term "Intangible Culture" is described as a living culture such as other valuable natural sites. According to the 2003 UNESCO Convention on the preservation of Intangible Heritage ratified by Indonesia in July 2007 through Presidential Decree No. 78 of 2007, those included as Intangible Cultural Objects are oral culture, performing arts, customs, knowledge of the universe and traditional handicrafts recognized by a community and individuals as a group or culture as cultural heritage passed on from generation to generation. Based on it, batik Indonesia is included as Intangible Cultural Heritage because batik Indonesia is a unique traditional handicraft which has a deep philosophical meaning concerning the human life cycle.\textsuperscript{71}

In the Convention for the Safeguarding Intangible Cultural Heritage of the UNESCO, Indonesian batik is batik made by hands and stamping. Batik Indonesia is recognized due to batik communities either Individual or group and the role of government. Then UNESCO also conducted research by collecting data from the community in regions having batik centers such as Jakarta, Cirebon, Madura, Pekalongan, Surakarta, Yogyakarta and also conducting several interviews on experts of culture and literature research.\textsuperscript{72} UNESCO in establishing batik as one of the world's intangible cultural heritage looked at the efforts of society and government as

well as documentation or data on maintaining and preserving the cultural heritage itself.

The Ministry of Education and Culture will launch a program of national heritage as a means of recording the national cultural heritage accurately and thoroughly, so that they can be a real reflection of Indonesia's cultural heritage. The heritage registered is intangible cultural heritage. According to the Director of the Internalization and Cultural Diplomacy, Ministry of Education and Culture, Etty Indriati, the recording of cultural heritage can be done by individuals and communities registered online and will be judged by a board of experts from artists, academics, community leaders, cultural observers, journalists, and those with expertise in cultural analysis. This recording is an attempt to create a database of Indonesia's cultural heritage and to protect the cultural heritage of Indonesia as well as to protect Traditional Knowledge and Traditional Cultural Expressions.

Another effort undertaken by the government has been introducing batik art through exhibitions held in the country and abroad as well, such as Inacraft and World Batik Submit. Indonesian Embassy to the United States also held a batik design competition, in which participants are citizens of the United States. Some of the designs selected are applied to the fabric by Indonesia and the winner gets a chance to learn to make batik Indonesia. Also with the existence of the Batik Museum in Pekalongan launched on July 12, 2006 by the President of the Republic of Indonesia.

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74 from [http://americanbatik.embassyofindonesia.org/](http://americanbatik.embassyofindonesia.org/)
Susilo Bambang Yudhoyono, with the vision of Batik Museum in Pekalongan as a container to preserve, and develop batik as an Indonesian cultural heritage and information center which needs to be developed, nurtured and maintained. The mission of the Museum Batik Indonesia is to encourage people to care about the existence of Pekalongan Batik Museum as the form of participating in Indonesia’s cultural preservation; encourages employers / batik craftsmen to continue to explore and preserve old patterns and create new patterns; documentation activities, research and presenting information and communicating it to the public for full utilization, for the benefit of the community labor and marketing. Then on October 2, 2010 a batik gallery was launched as the first step in realizing the desire to have a Cultural Museum Batik in Jakarta, and Indonesia as a gateway.

IV.5 Government’s Effort in Defending Batik as Indonesia’s Cultural Heritage in UNESCO

Batik Indonesia has been officially acknowledged by the UNESCO. Batik has been recognized as Representative List of the Cultural Intangible Heritage of Humanity in the Fourth Session of the Intergovernmental Committee on Intangible Cultural Heritage in Abu Dhabi. UNESCO acknowledged Indonesian batik along with 111 nominees of cultural arts from 35 nations. 76 were acknowledged and listed.

in the Representative List. Previously in 2003 and 2005 UNESCO have acknowledged Wayang and Keris as Masterpieces of the Oral and Intangible Cultural Heritage of Humanity, which in 2008 were enlisted in the Representatives List.\footnote{See “Batik Indonesia Resmi Diakui UNESCO”, Antara, Friday, 2 October 2009}

It is realized that Indonesian batik is full of techniques, symbols, and cultural aspects closely related to Indonesian lives from birth to death. The richness of batik motifs coming from various regions and provinces, are the evidence that Indonesia is truly be worthy as the source where batik grows and develops. Batik as tradition has been passed on from generation to generation. Batik is related to the identity of the Indonesian culture, and through its symbolisms, colors and motifs, creativities and the spiritualisms of the Indonesian peoples are reflected. Indonesian batik possesses certain uniqueness which cannot be found anywhere else. For Javanese peoples for example, batik is not just cloth with patterns, but also a reflection of the philosophy of life and ancient cultural heritage which has to be protected.\footnote{Check “Batik Warisan Budaya Indonesia”, at http://www.jatengpromo.com, 15 October 2009.}

The acknowledgement of Indonesian batik by the UNESCO involved the stakeholders related to batik; the government, artists, experts, association of businessman, batik foundations and also the peoples of Indonesia, in the organization of nomination documents. Representatives of the Indonesian government in the Subsidiary Body members’ countries, such as United Arab Emirates, Turkey, Estonia, Mexico, Kenya, Paris and South Korea held important role in introducing batik to a wider audience of the Subsidiary Body members, so that they could study the nomination of Indonesian batik more rigorously. The UNESCO recorded Indonesian batik and
another nomination from Spain as the best nomination document which can be made as example in the future of nomination of intangible cultural heritage.\textsuperscript{79} Indonesian government’s effort is truly a commitment as a member of UNESCO Convention countries on the Protection of Intangible Cultural Heritage, applied since 2003 and has been ratified by 114 countries (Indonesia ratified it in 2007).

The convention was intended to emphasize the protection of intangible cultural heritage; oral tradition, expression, ritual, festivity, handicraft, music, dances, traditional art exhibition and culinary. Living heritage and passed on from generation to generation, have given a sense of identity and perseverance to the community, and is considered as an effort in honoring the variety of cultures and human creativities.

The UNESCO recognizes that Indonesian \textit{batik} possesses unique technique and cultural symbolism which are the identity of the Indonesian peoples from birth to death; new born babies are carried in certain \textit{batik} motif bringing good luck, and the deceased are covered also with \textit{batik}. Clothing with daily motifs are worn routinely in business and academics events, while other motifs are worn for wedding ceremonies, pregnancies, and in \textit{wayang} shows, and also other art-related exhibitions. \textit{Batik} plays main role in certain rituals. Various motifs of Indonesian \textit{batik} signifies also various foreign influences, starting from Arabic calligraphy, phoenix from China, cherry flower from Japan, to peacock from India or Persia. The tradition of making \textit{batik} is passed on from generation to generation; \textit{batik} is related to the identity of Indonesian

\textsuperscript{79} ANTARANEWS.com, Batik Indonesia has been officially acknowledged by the UNESCO, Friday, 2 October 2009 20:44 WIB, http://www.antaranews.com/berita/1254491066/batik-indonesia-resmi-diajukan-unesco
culture through numerous symbolism, colors and patterns, expressing the creativity and spirituality of the Indonesian peoples.\footnote{Batik has been acknowledged by the UNESCO as World’s Cultural Heritage, Posted on October 3, 2012 by PS/IM http://www.indonesiamedia.com/2012/10/03/2-oktober-1999-batik-diakui-unesco-sebagai-warisan-budaya-dunia/}

The UNESCO included Indonesian batik in the Representative List because batik has fulfill the criteria such as rich with symbolism and philosophy of the Indonesian peoples; giving contribution to the preservation of intangible cultural heritage for recent and future time. Next, all components of the peoples along with the government carry out continual steps for the protection including enhancement of awareness and development of capacity including education and training activities. In preparing the nomination, the related parties have done several activities including field research, discussion, seminar and other to discuss the content of the document and enriching the information more openly and freely. The government has included Indonesian batik into the list of Indonesian Cultural Art Inventory.

The inclusion of Batik Indonesia in the UNESCO’s representative list of intangible cultural heritage of humanity or Wayang and Keris as masterpieces of the oral and intangible cultural heritage of humanity are truly evidences of international acknowledge on Indonesian cultural heritage. The way the government defended batik as Indonesian was by collecting data and information as detailed and accurate on batik in Indonesia. Based on such documentation, we were able to make intensive “counter publication” to show that batik is truly belongs to Indonesian peoples.
Indonesian government also has done various efforts in defending our cultural heritages, such as: inventoring Indonesia’s intangible cultural heritages; filing other Indonesian cultural arts as world’s heritage in the UNESCO. The procedure underwent for such acknowledgment was done based on UNESCO Convention in 2003 on Intangible Cultural Heritage. The UNESCO Convention has been ratified by the government through PP Number 78 Year 2007 and, starting from 15 January 2008, Indonesia officially has become a Convention Member Country. Therefore Indonesia has the right of nominate its cultural arts to be listed in the UNESCO’s representative list.

UU Number 19 Year 2002 on Copyright warrants protection on communal or personal intellectual property rights. Regions are given freedom to enlist their cultural arts to obtain protection as cultural property. Such effort has been done by Province Government of Daerah Istimewa Yogyakarta (DIY) and Province Government of Bali; DIY regarding batik with Yogyakarta style, and Bali regarding dances and music. In the UU, copyright is defined as, ”exclusive right for creator or custodian to make public or duplicate his/her creation or to give authorization without reducing limitations as per the applied law” (article 1 verse 1). The government collected evidences in forms of government regulations related to copyright of batik. Other evidences which supported the claim of batik as truly Indonesian’s were historical evidences, and method of making batik documented and studied by the UNESCO. In the European literature, the technique of making batik was firstly found in the History

of Java (London, 1817) by Sir Thomas Stanford Raffles. During an exhibition in Paris in 1900, Indonesian batik astonished the public and the artists. *Batik* was also firstly introduced to the world by President Soeharto, who were at that time wore batik in the UN conference.\(^{82}\)

Agung Laksono expressed that the four certificates from the UNESCO are truly the symbols of the world’s acknowledgement for Indonesia cultural heritages, in this case Indonesian’s *Wayang*, *Keris* and *Batik*. All three of them are listed in ”The Representative List of the Intangible\(^{83}\). Other than the three certificates, one certificate is for Best Practice of Indonesian *Batik* Heritage Education and Training. Such is a recognition for competence and willingness of Indonesian *batik* community in preserving *batik* as Indonesia’s cultural heritage, through education and training for school students. The Best Practice recognition is followed by programs of aid and elaboration project from the UNESCO in the form of making books, films and exhibition preparation for road shows around the world by the UNESCO, which is a great opportunity for promoting *batik* to the whole world. Such inscription by the UNESCO bring along consequences, that the government and related public organization must always preserving and developing the intangible cultural heritage, based on the commitment stated in the files filed to the UNESCO, in order to fulfill all the criteria so that such inscription will not be revoked\(^{84}\).

\(^{82}\) Bangga Hanapramana, Knowing Indonesian BAtik http://best-inspire.blogspot.com/2012/11/mengenal-batik-mengenal-indonesia.html

\(^{83}\) Empat Sertifikat UNESCO Bukti Pengakuan Dunia http://www.menkokesra.go.id/node/66

\(^{84}\) Empat Sertifikat UNESCO Bukti Pengakuan Dunia http://www.menkokesra.go.id/node/66
CHAPTER V
CONCLUSION AND RECOMMENDATION

V.1 Conclusion

After exploring and analyzing all the data, this study concludes that in order to preserve and prove batik as truly Indonesian cultural heritage is really a hard task, since Indonesia knows that batik technique has been around since thousands years ago. Batik creation technique developed thousand years ago was not originate from Indonesia but from Middle East and Mesopotamia, which entered Indonesia along with Islamic culture. But the development of batik in Indonesia is the richest, observing from the various motifs in Indonesian batik and the uniqueness of Indonesian batik; each motif has its own philosophy.

The government effort in collecting evidences of batik as truly Indonesian, before the UNESCO, has been collecting evidences of cultural aspects such as history of batik, and philosophy of batik based on certain motifs, and documentation of batik creation by batik artists, especially batik with “parang” motif, claimed by Malaysia, also was supported by the Law number 19 year 2002 article 10 verse 2 on Copyright of batik, stipulated by the Indonesian government on protection of folklore. The above are the points which saved batik from being claimed by Malaysia. We can say

85Law number 19 year 2002 article 10 verse 2 on Copyright: “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”
that Indonesia has already made a law to protect *batik* as Indonesian cultural heritage. Soft power strategy and diplomacy chosen by the Indonesian government in resolving the case was considered successful, after the acknowledgment from the UNESCO. What we need to be aware of is that in the law number 19 year 2002, traditional *batik* as traditional-based knowledge is protected by the nation. This argument is based on article 10 verse 2 of Law number 19 year 2002 which stated that the copyright is held by the nation, “the Nation holds the Copyright of folklore and cultural products which are mutual in possession, such as stories, tales, legends, songs, handicrafts, choreographies, dances, calligraphy, including *batik* art.” But in the reality the article is yet to be properly implemented since the enforcing regulation in the form of government regulation on Copyright held by the nation is yet to be published, so that it will not be impossible any other Indonesian cultural art would be claimed by other countries. The government’s effort in defending *batik* deserved to be made as drive train for the peoples to act more in preserving other cultural heritages so as not to be claimed by other countries. In 2 October 2009, the UNESCO acknowledged *batik*, and it was declared that 2 October is the national day even international day of *batik*.

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86 Indonesia (2), Law on Copyright, Number 19, LN No.85 year 2002, TLN No.4220, article 10 verse (2).
87 The Globe Journal, Tuesday, 02 October 2012 13:03 WIB
V.2. Recommendation

In this matter, the resolution of case made by the Indonesian government through soft power diplomacy is a good starting step in resolving the case; involving the UNESCO as independent body as well as decision maker. The first recommendation was that the government should have cooperation with the regional governments to collaborate in strengthening regulations on folklore and other cultural arts covering aspects of the nation’s culture. Clarity on national control on cultural products regulation is needed, as a form of effort need to be done to overcome future cultural issues; such thing can also strengthen legal foundation on Indonesian culture copyright.

Secondly, the government together with batik artists needs to cooperate in promoting batik in exhibitions or in online media periodically, so that batik will be known as Indonesian cultural product. Tourists can also observe the uniqueness of this nation and willing to travel to Indonesia to know and also to learn Indonesian culture. This will impact the economy of the country, and will bring profit to the artists and also the Indonesian government, economically. This practice can also be done with other cultural products to protect from any claim in the future.

Thirdly, the domestic government and also the peoples must work together in the promotion. The love for the nation’s culture must be taught to the young generations, therefore education on cultural heritage must be enhanced to that the young can continue to preserve and love the various cultural products of Indonesia. Education in the form of extracurricular or cultural organization such as cultural art
studios must be enforced to educate and train the young, so that they will know and love Indonesian cultural heritages.