

Safeguard for our biological resources

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At long last Malaysia has brought into effect the much-awaited law to curb piracy of our biological resources and associated traditional knowledge.

The 2017 Access to Biological Resources and Benefit Sharing Act – was brought into effect on Dec 18, 2020 after implementing regulations were approved.

This Act is important. Because, for long, resources of developing countries have been accessed for free, mainly by developed countries; and then turned into valuable products, yielding millions in revenue for them.

An estimate of US\$50 billion (RM203 billion) is reportedly earned annually by pharmaceutical and food companies relying on genetic resources for their research and development.

Nothing goes to the countries from where the resources are accessed. Nor are any benefits shared with indigenous and local communities when in fact the resources are accessed based on traditional knowledge – of their invaluable and multifarious uses.

Without the accrual of any benefits, these resources and traditional knowledge face an existential threat. This in turn threatens the continued preservation of the traditional knowledge, innovations and practices of indigenous and local communities that have proved so critical for the nurturing and conservation of biological diversity and the sustainable use of its components as well as for the sustainable livelihoods of these communities.

The importance of preserving and rewarding traditional knowledge holders cannot be overemphasised. Their knowledge has helped to heal, feed and clothe the world.

For example, three quarters of the plants that provide active ingredients for prescription drugs came to the attention of researchers because of their use in traditional knowledge. And for a multitude of generations, traditional farmers have drawn on diverse plant genetic resources to breed the major crops that feed the world today.

More is portended as the world looks to ancient proven systems of resilience to extreme climates to respond to the spectre of climate change.

With this law, anyone wishing to access biological resources or associated traditional knowledge for research and development purposes, must first get a permit from the designated state authority. This permit will be given only after the parties enter into an agreement for sharing benefits that materialise from the commercialisation of any resultant product.

Similarly, any access to the traditional knowledge of indigenous communities associated with the resource requires the prior free and informed consent of the indigenous community, and the resulting benefits to be shared.

The benefits can be financial such as royalties, fees for research permits and patent issuance. Or, they can be non-financial such as sharing of research and development findings, training through research exchanges and collaborative research as well as employment opportunities for the communities.

Research is preserved by exempting public universities and research institutions from the provisions of this act. So, for example, any exchange of blood samples (which are biological material) by a doctor doing research in say a university hospital with other researchers, will not need a permit or a benefit sharing agreement.

Similarly exempted are domestic researchers collaborating with researchers overseas. All that will be needed is to record the particulars of the exchanges with the institution.

As is well-known, culprits who steal biological resources often develop products and patent them in countries overseas. As our law has no extra-territorial effect, how then can biopiracy be checked?

An international treaty comes to the rescue – the 2010 “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation”. It obliges countries who are parties to the treaty to ensure that the biological resource has been legally accessed in compliance with the ABS (Alternative Business Structure) law of the country of origin.

So a company seeking to patent in Germany a product derived from a Malaysian biological or genetic resource will have to prove to the German authorities that it has complied with our domestic ABS law. Namely, that it accessed the material with our permission and entered into a benefit sharing agreement with the resource provider.

Properly implemented, the Act may well provide an impetus for generating invaluable returns for the country. Especially since Malaysia is one of 12 mega-biodiversity-rich countries in the world, and its resources well sought after.

The Sarawak Biodiversity Centre, for example, has entered into several agreements with foreign companies for the development of products from resources accessed from its rainforest, and valued for the uses identified by the traditional knowledge of its indigenous communities.

The government has announced its commitment to the enforcement of the Act because “this treasure has great potential for the development and creation of new products in the pharmaceutical and nutraceutical industries. It includes medicine, supplements and cosmetic products”.

All well and good. However, a new glitch has emerged. Researchers seem able now with emerging technologies to access the genetic sequence of the resource posted digitally, through which a product may be developed. This obviates the need to access the physical resource itself, thus bypassing the ABS law of a country.

Developing countries have cried foul and demand that parties to the Nagoya ABS Protocol commit to complying with the domestic ABS law of countries if the digital sequence information accessed is traceable to a genetic resource of a particular country.

Negotiations on this issue are ongoing under the auspices of the Convention on Biological Diversity and the matter remains unresolved.

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