




**GRTKF**  
**THE CORE CONCEPTS AND OBJECTIVES**  
*WHAT THEY ARE AND WHY NEED*  
*PROTECTIONS*  
**INDONESIA'S PERSPECTIVE**

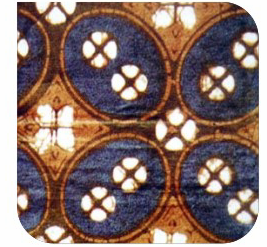


**DAMOS DUMOLI AGUSMAN**  
**DIRECTOR FOR TREATIES ON ECONOMIC AND**  
**SOCIO-CULTURAL AFFAIRS**  
**DEPARTMENT OF FOREIGN AFFAIRS,**  
**REPUBLIC OF INDONESIA**





# IN PURSUING LEGAL PROTECTION FOR GRTKF



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- GRTKF ARE NOW MAINSTREAM ISSUES AT WIPO, WTO AND CBD: LOOKING FOR AN INTERNATIONAL REGIME FOR THEIR PROTECTION
  - CONCERNS OF GRKTF HOLDERS (TRADITIONAL COMMUNITIES):  
NO PROTECTIVE REGIME AS YET AVAILABLE
  - BECOME CONTROVERSIAL ISSUE IN DIPLOMACY (BIODIPLOMACY, IP DIPLOMACY) RAISE NORTH-SOUTH TENSIONS?:  
IP PIRACY VS GRTKF PIRACY



# WHAT GRTKF ARE: PROBLEM ON DEFINITION



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- EXTENSIVE WORKS AND STUDIES HAVE BEEN CARRIED OUT WITHIN AND OUTSIDE WIPO
  - NO SETTLED DEFINITION BUT WORKING DEFINITIONS ARE DEVELOPED AND WELL ESTABLISHED
  - RIGID DEFINITION IS NOT NECESSARY BUT HOW THEY ARE DEFINED IS REQUIRED FOR IP PROTECTION
  - LEVEL OF MATURITY:



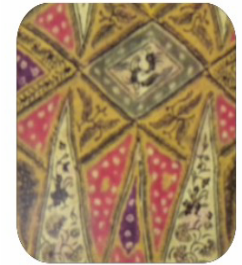
# *COMMON ELEMENTS OF TK AND F AGREED POINTS*



- **GENERATED, PRESERVED AND TRANSMITTED IN A TRADITIONAL AND INTERGENERATIONAL CONTEXT;**
- **DISTINCTIVELY ASSOCIATED WITH A TRADITIONAL COMMUNITY: EVOLVED, DEVELOPED, RECREATED WITHIN THE COMMUNITY**
- **BY UNKNOWN AUTHORS**
- **COMMONLY HAVING SPIRITUAL AND RELIGIOUS CHARACTERS**
- **OTHERS**



# INHERENT CHARACTERS OF TK AND F *INDONESIA'S PERSPECTIVE*



- 
- THE PRODUCTS OF CREATIVE INTELLECTUAL ACTIVITY, BOTH INDIVIDUALLY AND COMMUNALLY
  - INTEGRAL PART OF A COMMUNITY'S CULTURAL AND SOCIAL IDENTITY, AND CULTURAL HERITAGE
  - INTEGRAL PART OF A NATIONAL IDENTITY WHERE THE EXPRESSIONS ARE ORIGINATED AND MAINTAINED



INDONESIA'S DEFINITION ON  
TRADITIONAL KNOWLEDGE  
(*DRAFT ACT ON PROTECTION TK N F*)



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- INTELLECTUAL CREATIONS IN THE FIELD OF [TK: KNOWLEDGE AND TECHNOLOGY [F: ARTS, INCLUDING LITERARY] HAVING CHARACTERISTIC ELEMENTS OF CULTURAL HERITAGE WHICH ARE GENERATED, DEVELOPED AND MAINTAINED BY A PARTICULAR COMMUNITY



# WHAT FOLKLORE ARE ELIGIBLE FOR PROTECTION



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- WIPO-IGC NEGOTIATION ON SUBJECT MATTERS ARE STILL ONGOING: MORE PRECISE DEFINITION VS INCLUSIVE DESCRIPTION
  - PROTECTABLE FOLKLORE:
    - BE INTELLECTUAL CREATIONS
    - LINKAGE WITH A COMMUNITY
    - STILL BE MAINTAINED



# WHAT TKs ARE ELIGIBLE FOR PROTECTION



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**•WIPO-IGC NEGOTIATION ON SUBJECT MATTERS ARE STILL ONGOING: GENERAL DESCRIPTIONAN TERM, A SET OF CRITERIA, NO DEFINITION AT ALL?**

**•PROTECTABLE TKs:**

- a traditional, intergenerational character,
- a distinctive association with its traditional holders, and
- a sense of linkage with the identity of the TK holding community





# INDONESIA'S PAINFUL CASES



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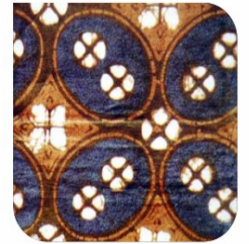
## •SHISEIDO CASE

- **1990s: The Japanese cosmetic transnational Shiseido patented 11 different compounds of traditional Indonesian medicinal plants or “Jamu”**
- **Indonesian traditional farmers who have grown “jamu” for generations were suddenly in danger of violating patent rights and should pay cost for something that they have been doing for centuries**
- **Indonesian groups, such as BioTani Foundation/PAN Indonesia launched a campaign against this biopiracy**

**24/01/2002: Shiseido withdrew its paten at the European Patent Office withdrawn on.**



# WHY THEY NEED PROTECTION? INDONESIA'S PAINFUL EXPERIENCES



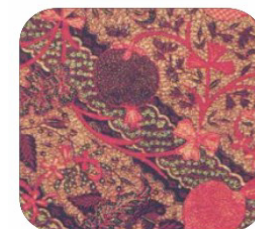
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John Hardy Case, 2008

- Ketut Deni Aryasa, a Balinese Artist allegedly copied illegally silver jewelry design called "Batu Kali".
- The design has been registered at Indonesian IP Office by John Hardy International Ltd
- Mr Ketut argued that the design has been known traditionally in his community called "Crocodile Skin motive"



# WHY THEY NEED PROTECTION? INDONESIA'S PAINFUL EXPERIENCES



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## Avian Influenza Case 2004-2007

- During 2004-2005, as obliged by WHO under Global Influenza Surveillance Network (GISN), Indonesia sent the specimens of virus H5N1 to WHO. However specimens have been used and vaccines were patented by major pharmaceutical companies. They sell them to Indonesia with significant price.
- In 2005, Indonesia stopped sending the specimens and started campaign for more open, fair and equitable access for all submitted specimens, which the adopted by WHO in 2007. Global Influenza Surveillance Network (GISN) was then deleted from WHO program



# WHAT TKs ARE ELIGIBLE FOR PROTECTION



## SHISEIDO CASE

- *The Indonesian crops with native names biopirated by Shiseido in the late 1990s*
- *The Japanese cosmetic transnational Shiseido filed for European patents on 11 different compounds of traditional Indonesian medicinal plants or Jamu*
- *Strong protests from Indonesian groups, such as BioTani Foundation / PAN Indonesia*
- *Shiseido withdrew the patents at the European Patent Office withdrawn on 24/01/2002.*



# WHY THEY NEED PROTECTION? *INJUSTICE, UNFAIR, MISS USE AND EXPLOITATION*



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- NO RECOGNITION OF VALUE OF GRTK AND TRADITIONAL SISTEM (HUMAN RIGHTS ISSUES)
  - MISSAPROPRIATION AND MISUSE FOR ECONOMIC BENEFITS
  - INSULTING TRADITIONAL COMMUNITIES



# WHY THEY NEED PROTECTION? *INJUSTICE, UNFAIR, MISS USE AND EXPLOITATION*



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CREATING INEQUITABILITY AND UNFAIRNESS IN  
INTERNATIONAL ECONOMIC SYSTEM (REOPEN  
NORTH-SOUTH ISSUES)

*IF THE KNOWLEDGE ASSETS OF DEVELOPED  
COUNTRIES ARE INTERNATIONALLY PROTECTED  
WHY THE DEVELOPING COUNTRIES'S ARE NOT?*



**BANDUNG DECLARATION 2007**  
***the New Asia Africa Strategic***  
***Partnership countries***



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*6. Emphasize that Traditional Cultural Expressions, Traditional Knowledge, and Genetic Resources are national resources that have, but not limited to, social, cultural, economic and spiritual values that should be addressed in a fair and equitable manner;*

*7. Stress the urgent need and resolve to take measures to prevent all forms of misuse, distortion, and misappropriation of Traditional Cultural Expressions, Traditional Knowledge, and Genetic Resources;*



# EXISTING IP LOGIC ON GRTKF



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- COMMON HERITAGE OF MANKIND AND THEREFOE IN PUBLIC DOMAIN?
  - PROBLEM ON PRESERVATIONS INSTEAD OF IP PROTECTIONS
  - NON-INDIVIDUALIZED HUMAN INTELLECTUAL ACTIVITIES: BEYOND IP DOMAIN





# CONCERNS ARISE



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- GROWING NUMBER OF CASES: MISAPPROPRIATION, AND PREVENTING TRADITIONAL COMMUNITIES FROM POSSESSING THEIR OWN PROPERTY
  - EVOLVING CONFLICTS BETWEEN IP LOGICS AND TRADITIONAL COMMUNITIES' RIGHTS:
    - 1980's: RESISTANCE OF TRADITIONAL COMMUNITIES TO THE IP SYSTEM (INTRODUCING INDIVIDUALISTIC LOGIC TO THE COMMUNAL THINKING)
    - PRESENT: THE RESISTANCE OF IP COMMUNITIES TO THE COMMUNAL LOGIC OF GRTKF (INTORDUCING COMMUNAL LOGIC TO THE IP SYSTEM)



THANK YOU

