



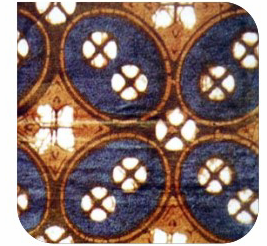
OVERVIEW ON THE PROTECTION OF TK, GR, AND TCE IN INDONESIA

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IN PURSUING NATIONAL LEGAL PROTECTION FOR GRTKF



- GRTKF are now mainstream issues in Indonesian legal system, looking for a *sui generis* regime for their maximum protection
- Indonesia is a home of diverse ethnic cultures, customs, value systems, and mega diverse genetic resources
- National concern towards international setting, no protective regime is yet available:
anticipating through national legislations, driven by the international unfair system

PROBLEM OF THE CONCEPT OF “PUBLIC DOMAIN”



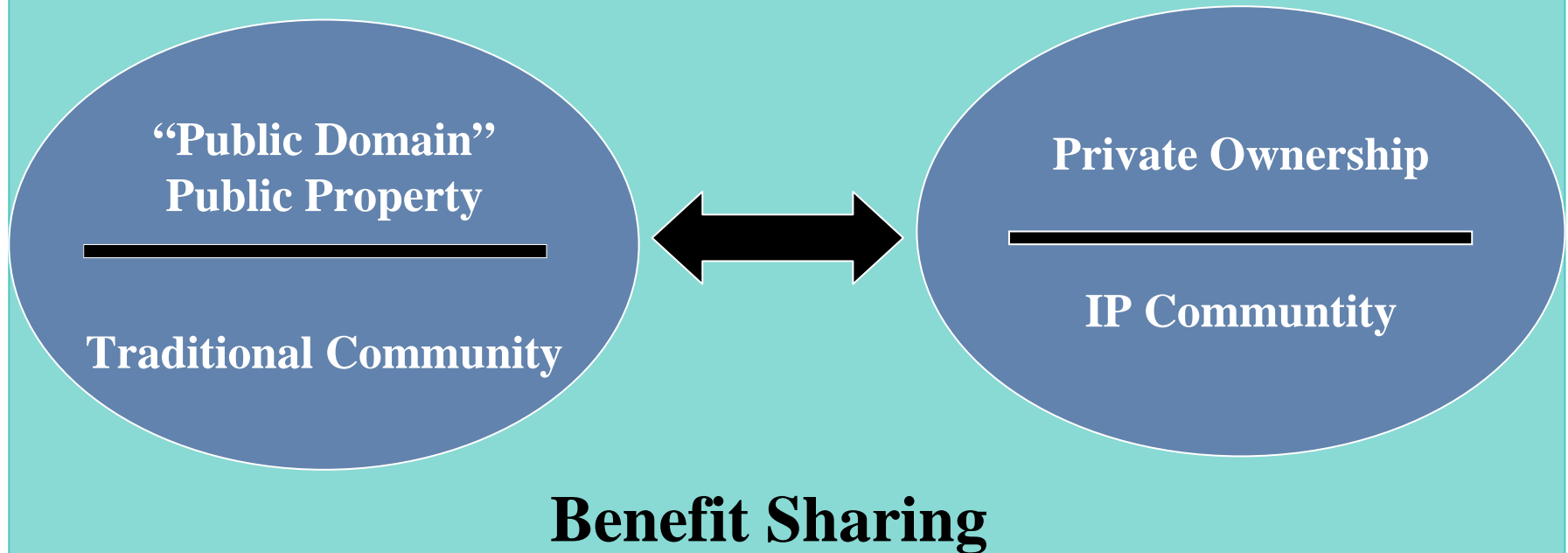
Public Domain/Common Heritage of Mankind



Private Ownership

Benefit Sharing Compromise

The Figure





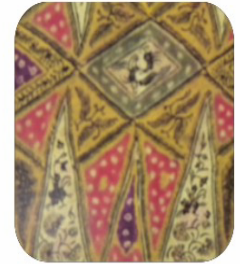
EXISTING LAWS IN INDONESIAN LEGAL SYSTEM



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- Bases for the national legal frameworks are available in the 1945 Constitution.
 - No *sui generis* law as yet endorsed. Parliament is now preparing two drafts of laws concerning the protection respectively, for Genetic Resources and Traditional Knowledge + Traditional Cultural Expressions (TK + TCEs).
 - Ministry of Health has already set out a regulation concerning Material Transfer Agreement (MTA) regime for viruses transfer



1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA (AS AMENDED)

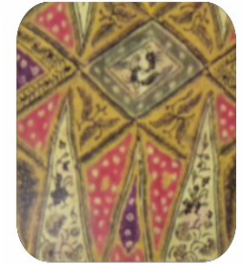


Article 18 B

(2) “State **recognizes** and **respects** traditional communities including their traditional rights as long as they are living and compatible to the development of society and the principles of the Unitary State of the Republic of Indonesia, and shall be governed by law.”



1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA (AS AMENDED)



Article 28 C

(1) “Every body has a right of self development through the fulfillment of his/her basic rights, has the right of education and **enjoy the benefits from science and technology, arts and cultures**, for the development of his/her welfare and the welfare of the society”

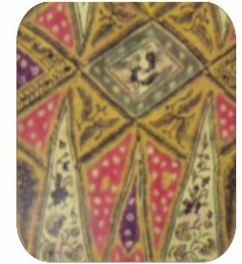
(2) “Every body has a right of personal development in his/her **collective efforts** to develop his/her society, nation, and state.

Article 28 I (3)

“**Cultural identities and rights of traditional communities shall be respected** with taking into account the current developments and civilizations.”



TRADITIONAL IDENTITY VS NATIONAL IDENTITY



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- The unity concept stated in Five Principles of National Ideology as the source of the contents of 1945 Constitution has encompassed the integrating process of Indonesian society into one nation (politic of national integration). **Politic of laws : unity of diversity**
 - Urgency of developing the national identity
 - Traditional Knowledge and Traditional Cultural Expressions are the integral parts of a national identity where the expressions are originated and maintained.



Copy Rights Law Number 19 Year 2002



Article 10

- (1) “State shall hold Copyrights on prehistoric and historic artifacts as well as other national cultures.”
- (2) “State shall hold Copyrights on folklores and people’s cultural works as common property, such as folk-tales, chronicles, fables, legends, songs, handicrafts, choreographies, dances, calligraphies, and other artistic works.”
- (3) “For publishing or reproducing the creations referred to in paragraph (2), persons other than Indonesian citizens shall acquire permits from the relevant agencies dealing with the matters.
- (4) “Further provisions on the Copyrights of the State as referred to in this article shall be provided for in a Government Regulation.”



Consumer Protection Law Number 8 Year 1999



It is prohibited:

“... to produce and/or sell certain products or services ... that are not properly labelled or not consisting of a compulsory explanation of the goods’ name, size, net, composition, direction of use, the date of production, side effects, the producers name and address, and other explanations that are deemed to be clearly mentioned on the label”



Trade Marks Law Number 15 Year 2001



Article 56

(1)“Geographical Indications shall be protected as a sign which indicates the place of origin of a good, which due to its geographical environment factors, including natural, human and the combination of both factors, gives a specific characteristic and quality on a good produced therein”

Article 59

Indication of Source is a sign that indicates the origin of a good but has not been registered



Draft of Law on the Protection of TK & TCEs

DEFINITION



Intellectual creations in the field of:

- **TK**

knowledge and technology

- **TCE**

arts, including literary works, having characteristic elements of cultural heritage which are generated, developed and maintained by a particular community



Draft of Law on the Protection of TK & TCEs



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- *Sui generis* regime devoted for the protection of TK and TCEs
 - Documentation carried out and maintained by the Government
 - **When TK and TCEs are used by third parties,** the foreign subjects are required to get permissions from the government and conclude agreements with local communities concerned on benefit sharing



Draft of Law on the Protection of GR



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- *Sui generis regime*
 - Documentation carried out and maintained by the Government
 - Mandatory disclosure of origin for Patent application
 - National Commission of GR to be established

GR used by third parties

- Require Prior Informed Consent (PIC) from the traditional communities concerned or their representatives. Local government may facilitate the issuance of the PIC
- Require Access Permit from the Government as recommended by the National Commission of GR
- Benefit sharing shall go to the National Commission of GR and distributed to the traditional communities.



**Regulation of The Ministry of Health
concerning
The Guidelines for Sending Specimens, 2008**



- Transfer of specimens shall be conducted through the Materials Transfer Agreement (MTA)
- MTA shall include the fair benefit sharing
- MTA shall embody the standard clauses as stipulated in the Model of MTA attached to the regulation.



**THANK
YOU**

