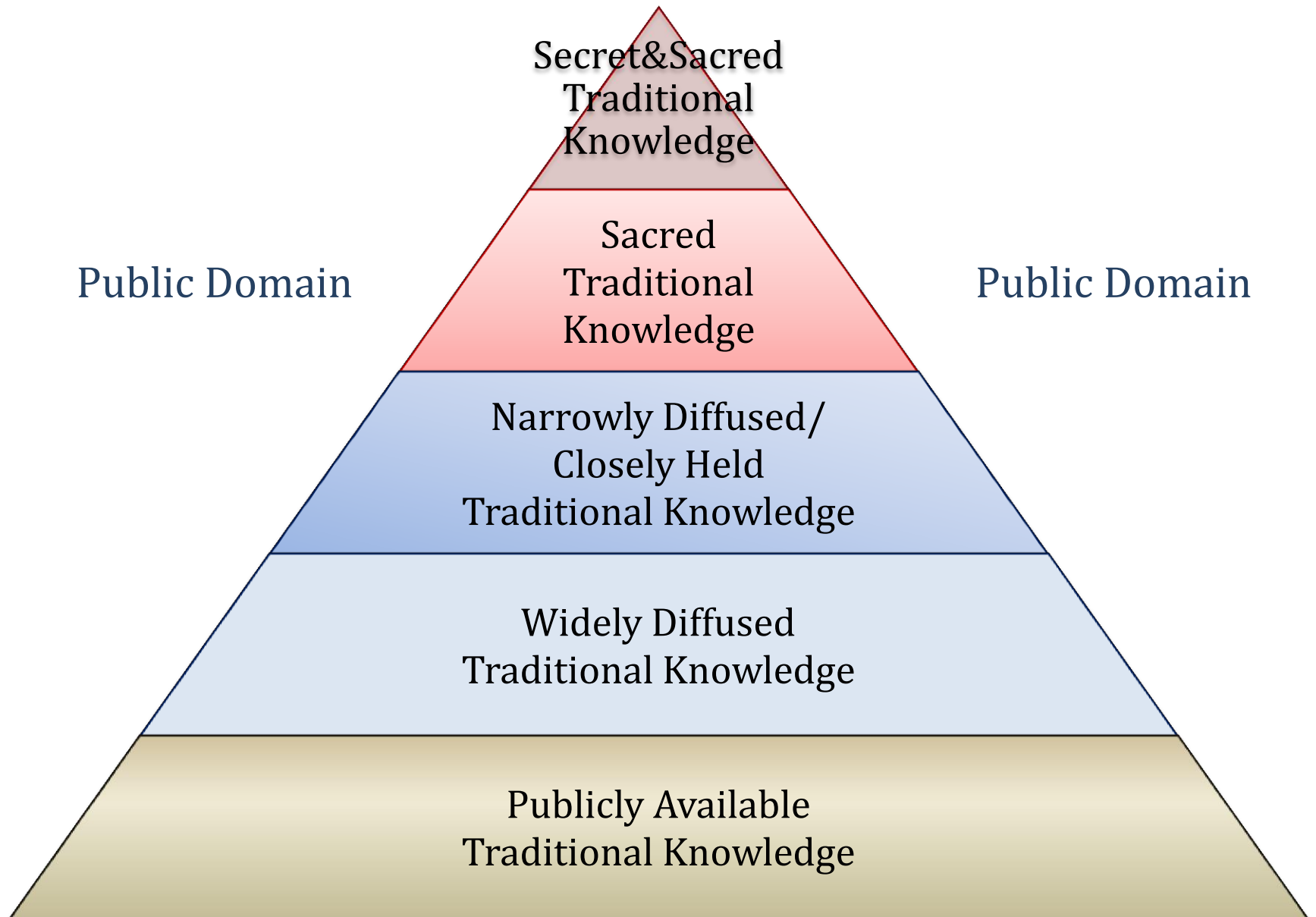


Tiered Approach
to the Protection of Traditional Knowledge
Perspective and Experiences of Indonesia

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Tiered Approach on Traditional Knowledge



Indonesian Legal Means for Traditional Knowledge Protection

- **Negative protection**
 - using existing conventional IP protection systems
- **Positive protection**
 - extending IP protections and/or establishing *sui generis* protection system
- **Defensive protection**
 - establishing special databases
- **Case-based protection**
 - using special principles on Traditional Knowledge protection, depending on the context of the cases in the field
- **Comprehensive protection**
 - implementing all legal means comprehensively under insitutional arrangements

Negative Protection – using Conventional IP System in Indonesian Legal Perspectives

- Law Number 7 Year 1994 about the Ratification of WTO-TRIPS Agreement 1994
 - President's Decree Number 15 Year 1997 about the Amendment of President's Decree Number 24 Year 1979 concerning the Ratification for Paris Convention 1883 on the Protection of Industrial Property Rights, as amended
 - President's Decree Number 18 Year 1997 about the Ratification of Berne Convention 1886 for the Protection of Literary and Artistic Works
 - President's Decree Number 74 Year 2004 about the Ratification of WIPO Performances and Phonograms Treaty 1996
 - President's Regulation Number 78 Year 2007 about the Ratification of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003

Positive Protection – IP Extension in Indonesian Legal Perspectives

- **Law Number 13 Year 2016 about Patent**
 - inclusion of compulsory disclosure of origin on TK-GR based invention
- **Law Number 28 Year 2014 about Copyrights**
 - inclusion of Traditional Cultural Expressions
- **Law Number 15 Year 2001 about Trademarks, and Government Regulation Number 51 Year 2007 about Geographical Indications, as amended by Law about Trademarks and Geographical Indications** (has just been approved by the House of Representative, in the final process to be published in the State Gazette)
 - optimizing Geographical Indications, Collective Marks, Certification Marks and Indication of Sources for TK-based products

Positive Protection – IP Extensions in Indonesian Legal Perspectives

- **Law Number 31 Year 2000 about Industrial Design**
may be used to protect tradition-based utility models
- **Law Number 30 Year 2000 about Trade Secrets**
maybe used to protect certain traditional secrets with economic values
- **Law Number 29 Year 2000 about the Protection of New Variety of Plant**
the inclusion of local varieties cultivated by traditional farmers

Positive Protection – IP Extension in Indonesian Legal Perspectives

- Law Number 18 Year 2002 about the National System on Research, Development and Implementation of Science and Technology
- Government Regulation Number 20 Year 2005 about Technology Transfer associated with Intellectual Property and the Results of Research and Development (R&D) by Higher Education and Institutes of Research and Development (R&D)
- Presidential Decree Number 6 Year 2015 about Creative Economy Agency as the transformation of Presidential Instruction Number 6 Year 2009 about the development of creative economy.

Indonesian Positive Laws concerning Traditional Knowledge associated with Genetic Resources Protection outside the conventional IP System

- Law Number 5 Year 1994 about the ratification of United Nations Convention on Biological Diversity
- Law Number 21 Year 2004 about the ratification of Cartagena Protocol on Biosafety to the Convention on Biological Diversity
- Law Number 4 Year 2006 about the ratification of International Treaty on Genetic Resources for Foods and Agriculture
- Number 11 Year 2013 about the ratification of Nagoya Protocol in Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from Their Utilization to the Convention on Biological Diversity
- Law Number 32 Year 2009 about the Protection and Mangement of the Environment

Indonesian Positive Implementing Regulations concerning Traditional Knowledge associated with Genetic Resources Protection outside the conventional IP System

- Ministry of Environment's National Strategy about the implementation of Nagoya Protocol in Indonesia in 2011-2020
- Ministry of Environment's Guidelines of Prior Informed Consent and Mutually Agreed Terms 2013
- Ministry of Environment's Procedure of Access to Genetic Resources and Traditional Knowledge associated with Genetic Resources 2013
- Minister of Agriculture Regulation Number 37/Permentan/OT.140/07/2011 about Preservation and Utilization of Plant Genetic Resources

Positive Protection

Indonesian Bills of Law and Regulation

- Bill of Law about Traditional Knowledge and Traditional Cultural Expressions (House of Senate initiative)
- Bill of Law about Creative Economy (House of Senate initiative)
- Bill of Government's Regulation about Traditional Cultural Expressions (Directorate General of Intellectual Property, Ministry of Law and Human Rights)
- Bill of Minister of Environment's Regulation about the Acknowledgement and Protection of Local Wisdoms (Ministry of Environment and Forestry)
- Bill of Law about Adat Legal Communities (Ministry of Environment and Forestry)
- Bill of Law about Culture (Ministry of Education and Culture)

Indonesian Legal Means for Defensive Protections

- Restricted/Metadata Database for Genetic Resources (GR), Traditional Knowledge (TK), Traditional Medicines (TMed)
 - Ministry of Environment and Forestry
 - Ministry of Agriculture
 - Ministry of Health
 - Ministry of Research and Higher Education
 - Ministry of Culture
 - Research Institutions and Universities
 - Non Government Organizatios

- Open Database for Traditional Cultural Expressions (TCEs), Intangible Cultural Heritage of Mankind (ICH)
 - Directorate General of IP, Ministry of Justice and Human Rights
 - Ministry of Education and Culture
 - Research Institutions and Universities
 - Non Government Organizations

Case Based Protection

Traditional Knowledge in Wulla Poddu Ritual

Tarung Ancestral Village, West Sumba, East Nusa Tenggara, Indonesia

Secret and Sacred Traditional Knowledge

- Sources and protocols inside the small hut named *Uma Kabubu*
- customary protocols to implement penal sanctions

Sacred Traditional Knowledge

- techniques to build the sacred houses and landscape

Narrowly Difused Traditional Knowledge

- techniques to process sacred rice and medicines to cure wounds
- protocol to maintain the sacredness of the houses based on genders

Widely Difused Traditional Knowledge

- Techniques to weave the woven clothes in West and East Nusa Tenggara archipelagoes: Lombok, Sumbawa, Sumba, Rote, Timor islands

Publicly Available Traditional Knowledge

- Techniques to roast Sumba coffee, similar with roasting other coffees

Case Based Protection Traditional Knowledge in Wulla Poddu Ritual, Tarung Ancestral Village, West Sumba, East Nusa Tenggara, Indonesia



Pictures by Radwin Nurlatif & Wenda Rajah

Case based Protection

Techniques to make and play Angklung Sunda, West Java, Indonesia



<http://www.negerikuindonesia.com>

Traditional Angklung or *Angklung Buhun* (pentatonic scale)

Sacred and Narrowly Diffused Traditional Knowledge

- Techniques to make and play *Angklung Kanekes Baduy* and *Angklung Dog-Dog Lojor* to be used in annual Seren Taun rituals to celebrate the harvesting time according to Sunda Buhun and Sunda Wiwitan local belief systems in Kanekes Banten and Cigugur Kuningan

Sacred Traditional Knowledge

- Technique to make and play *Angklung Gubrag* to worship Nyai Pohaci, the goddess of rice in several parts of West Java

Non-Sacred and Narrowly Diffused Traditional Knowledge

- Technique to make and play *Angklung Badeng* which is used as recreative music in sincretic Sundanese-Muslim people in Malangbong and Garut

Case based Protection

Techniques to make and play Angklung Sunda, West Java, Indonesia



Angklung has been inscribed as the Intangible Heritage of Mankind in 2010



Case based Protection

Techniques to make and play Angklung Sunda, West Java, Indonesia

Modern Angklung (diatonic scale)

- Converting Angklung from pentatonic to diatonic musical scale by Daeng Sutigna
- **Melodious Angklung**, created and developed by Udjo Ngalagena and his family:
 - **Hanged Angklung** for orchestra (copyrights of Daeng Oktaviandi Udjo)
 - **Poked Angklung** and **Electric Angklung** (copyrights of Yayan Udjo)
 - **Grand Angklung**: combining the classical playing way by shaking the angklung with the new ways by poking and beating the angklung (copyrights of Taufik Hidayat Udjo)



Case based Protection

Techniques of Batik of Yogyakarta, Indonesia

- **Secret and Sacred Traditional Knowledge:**
meditative technique in writing Batik clothes by *canting*. The results will be used by the primary wife of the King only inside the palace (*keraton*)
- **Not Secret but Restricted and Sacred Traditional Knowledge:**

Batik motives named Parang Barong, Parang Kesuma, Parang Sobrah, Parang Rusak, Parang Klithik and Parang Pamo are supposed to be used only for the members of royal families and their inheritances, inside and outside the palace.

Parang Barong had been created by *Sultan Agung* Hanyakrakusuma hundred years ago, before Indonesia became a country in 1945.



Case based Protection

Techniques of Batik of Yogyakarta, Indonesia



- **Closely Held Traditional Knowledge**
techniques to maintain, wear and store mainland Batiks in Yogyakarta and Surakarta, using *lerak* fruits and pleating technique with jasmine, gambier and cananga odorata/ylang-ylang flowers
- **Widely Diffused Traditional Knowledge**
Indonesian 'block immerse technique' to make coastal and mainland Batiks using a writing tool called *canting* or stamp to block the uncolored area of the clothes by wax, and hot water to rinse the wax after the colouring process. This technique has been widely used in Cirebon, Pekalongan, Tuban, Banyumas, Banyuwangi, and Madura on the north coastal lines of Java and Madura Islands, as well as in Garut, Yogyakarta and Surakarta in the mainland areas of Java Island.
- **'Batik' and 'Batik education method' have been inscribed as Intangible Cultural Heritage of Mankind in 2009.**



Case Based Protection

Art Therapy in Bali

meditating and dancing in Gunung Sari Temple, Ubud, Bali, Indonesia

- Sacred Traditional Knowledge associated with Traditional Cultural Expression

meditation in a temple specialized for dancers to harmonize the mind, body and soul based on Balinese Hindi tradition, resulting in reducing stress and stress-related illnesses, which will appear as *'taksu'* while dancing.

Taksu is the peak achievement of performance of a Balinese dancer after he/she has mastered *wiraga* (basic skills to dance), *wirama* (skill to dance in harmony with the music), and *wirasa* (skill in depicting the character of the dance).



Case Based Protection

Art Therapy of Bali

meditating and dancing in Gunung Sari Temple, Ubud, Bali, Indonesia

- Three genres of Balinese dances have been inscribed as Intangible Cultural Heritages of Mankind (ICH) in 2015



Case Based Protection

Traditional Preservation Method of *Cakalang* /Skipjack Tuna Fish Manado, North Sulawesi, Indonesia

- Narrowly diffused but publicly available Traditional Knowledge

