



NATIONAL DATABASE ON GRTKTCE

The Need to Protect Genetic Resources and Traditional Knowledge

Kuala Lumpur, 11 July 2012

Ajeng Widianty

**Directorate of Economic and Socio-Cultural Treaties
Directorate General of Legal Affairs and International
Treaties
Ministry of Foreign Affairs**

OUTLINE



1. What is GRTK
2. Why do we need to protect GRTK
3. Main problems:
 - a. Effective national and international legal protection (*sui generis*)
 - b. Challenges and problems generally caused by unfair international system and practice and environmental issue, e.g: biopiracy, misappropriation of use, unequal share of benefits, food crisis, climate change
 - c. No inventory/database of GRTK
4. How to protect GRTK
 - a. Positive Protection
 - b. Defensive Protection
5. Establishment of GRTK data base

WHAT IS GR? (1)

Genetic Resources:

genetic material of actual or potential value and its derivative, like plantation, bacteria, animals



Indonesian herbs and spices



Papua red fruit



Laughing chicken,
South Sulawesi

WHAT IS TK? (2)

Traditional Knowledge

intellectual knowledge resulted from traditional activity of community



Batik



Jamu



Subak

WHY DO WE NEED TO PROTECT GRTK?

(1)

“GRTK is a potential asset possessing great economic and cultural benefits”

- The *International Seed Trade Federation* (FIS) in 1998 researched the total trade of genetically modified seed valued of USD 30 billion annually, while the total trade of herbal medicinal industries reached USD 43 billion annually.
- Stephen B. Brush (1994) said *“Genetic resources is the foundation of all food production and the key to feeding unprecedented numbers of peoples in times of climate and other environmental change”*.
- World Health Organization (WHO) predicted the total trade of herbal medicine will reach **USD 5.000 billion** in 2025.

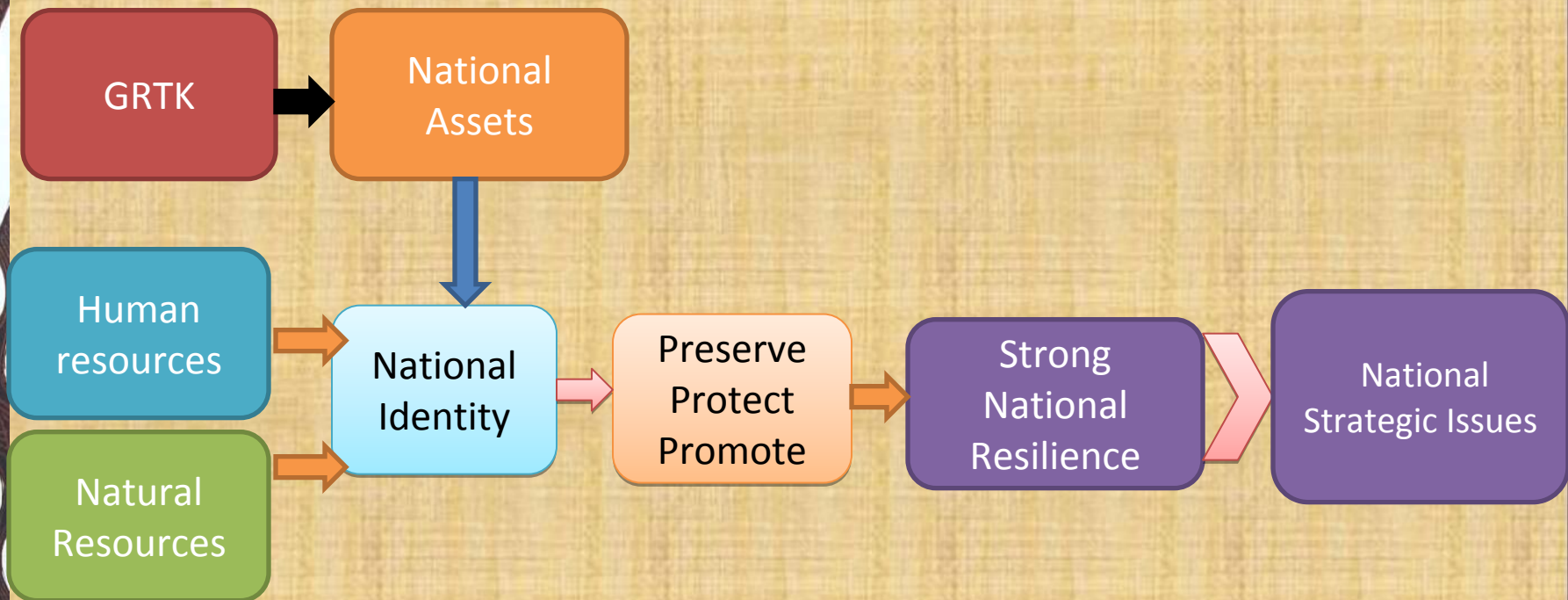
WHY..CONT'D (2)

“The existing international legal system have not yet provided an effective protection of GRTK while there are continuous practices of misappropriation of GRTK”

In 1998, *ayahuasca*, a plant used in religious ceremonies and sacred to 400 Amazon groups, was stolen from an Amazon tribe by a US citizen. When the tribes protested, the US Inter-American Foundation cut off its annual \$1.1 million aid to the region at the behest of the US Government (*Seed Europe*).

In 1970s the US National Cancer Institute (NCI) invested in extensive collection of *Maytenus Buchananii* (the plant yields *maytansine* which was considered a potential treatment for pancreatic cancer) from Simba Hills of Kenya. More than 27.2 tonnes of the shrub was collected by the US NCI, however, the material was collected without the consent of the Digo community (indigenous of the Simba Hills area) neither was any recognition of their knowledge.

WHY..CONT'D (3)



INDONESIA'S DIVERSITY

National Assets:

- Indonesia has the 3rd largest tropical forest area
- Indonesia is the largest archipelagic country, with more than **17.480** islands
- Indonesia has the largest coral reefs area
- With over **300** ethnic groups speaking **700** dialect on more than **6.000** inhabited islands, the Indonesian archipelago is a showcase of mega bio and cultural diversity



INDONESIA'S BIODIVERSITY

“For Indonesia, as a mega bio-diversity country and enriched with abundant cultural and natural resources, a protection of GRTK is a must”

- ✓ Indonesia is the **2nd** richest in bio diversity in the world after Brazil. If marine biotic included, Indonesia is claimed to have the richest biodiversity in the world ;
- ✓ From **5.131.100** biodiversity in the world, **15,3%** of them existed in Indonesia;
- ✓ From **40.000** medicinal plant species in the world, **30.000** of them found in Indonesia, however only **300** species that have been utilized for industry;
- ✓ Indonesian State Ministry for Environment (2011) estimated Indonesian medicinal plants worth **14.6 billion US Dollar**.



Mahkota Dewa/
Phaleria Macrocarpa



Temulawak/
Curcuma Xanthorrhiza



Sambiloto/
Andrographis paniculata

NATIONAL LEGAL PROTECTION

INDONESIAN LEGISLATION

Genetic Resources:

1. Law No. 5/1960 regarding Basic Agrarian Law
2. Law No. 5/1990 re. Conservation of Natural resources and its ecosystem
3. Law No. 41/1999 re. Forestry
4. Law No. 4/2006 re. Ratification of International Treaty on Plant Genetic Resources for food and agriculture
5. Law No. 18/2004 re. Plantation
6. Law No. 31/2004 re. Fisheries
7. Law No. 32/2009 re. Environmental Protection and Management
8. Government Regulation No. 6/1995 re. Protection of Vegetation

Traditional Knowledge:

1. Law No. 19/2002 re. Copy Rights

NATIONAL LEGAL PROTECTION (2)

INDONESIAN LEGISLATION

- **Current draft laws related to GRTK**
 - Draft Law on the Protection of Genetic Resources
 - Draft Law on the Protection of Traditional Knowledge and Folklore

Harmonizing and synchronizing the existing laws and the draft laws is a must to ensure the effective protection of GRTK

INTERNATIONAL LEGAL PROTECTION

- **WIPO INTERGOVERNMENTAL COMMITTEE ON GRTKTCE (IGC-GRTKTCE)**
 - At the 26th of WIPO General Assembly (26 September – 3 October 2000) established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions in order to solve issues on:
 - a. access to genetic resources and benefit sharing;
 - b. protection of traditional knowledge, innovations and creativity;
 - c. protection of expressions of folklore.
 - The 40th Session of WIPO General Assembly in October 2011 renewed the mandate of Intergovernmental Committee on GRTKTCE (IGC-GRTKTCE), to undertake text-based negotiations with the objective to finalize international legal instruments on the protection of GRTKTCE

INTERNATIONAL LEGAL PROTECTION

- **UN-Convention on Biological Diversity**
 - The adoption of Nagoya Protocol on Access and Benefit-Sharing from the Utilization of Genetic Resources.
 - Nagoya Protocol will require further mechanisms to be fully implemented: establishing national focal points (NFP) and competent national authorities (CNA), establishment of Access and Benefit-sharing Clearing-House to share information, domestic legislation to implement ABS, negotiate MAT, awareness-raising, technology transfer, financial support.
- **WHO**
 - Traditional Medicine Strategy 2002-2005
 - The Pandemic Influenza Preparedness Framework for the sharing of influenza viruses and access to vaccines and other benefits ("PIP Framework") (adopted 2011)

INTERNATIONAL LEGAL PROTECTION

- **WTO – TRIPS**

- The TRIPS Agreement requires a review of Article 27.3(b) which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties.
- Paragraph 19 of the 2001 Doha Declaration said TRIPS Council should also look at the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity, the protection of traditional knowledge and folklore.



INDONESIA'S OWN EXPERIENCES OF CASES RELATED TO UNPROTECTED ASSETS OF GRTK

SHISEIDO CASE



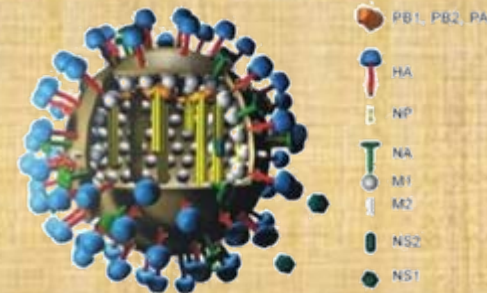
- In 1999, *The Shiseido Corporation of Japan*, a multinational cosmetic and skincare company, patented eleven Indonesian traditional Jamu healing herbs.
- The patent resulted a high pressure from Pesticide Action Network (PAN) and other concerned civil society organizations and Shiseido was bombarded with bio-piracy campaign messages threatening the company's image.
- Under pressured from public protests, Shiseido cancelled the patents before the case brought before the court.
- PAN representatives commented *"This bio-piracy by Shiseido means they've stolen what belonged to our traditional healers, stolen our farmers knowledge, their seeds and systems. We would like to educate our farmers about their rights, and their ownership rights of their traditional crops. We call farmers crops our 'traditional seeds', we say these are 'community intellectual rights' and we would like to have protection for our property against such bio-piracy."*



AVIAN INFLUENZA CASE 2004-2007



- 2004-2005, through the Global Influenza Surveillance Network (GISN), Indonesia was obligated to send H5N1 virus specimens to WHO. But the specimens were sent to pharmaceutical companies producing vaccines and then patented and sold to Indonesia.
- 2005, Indonesia stopped sending specimens and demanding open, fair and equitable access for all specimens sent.
- 2007 WHO officially closed GISN.



HOW TO PROTECT GRTK



■ Positive Protection

- Creating new regimes in national and international laws.

■ Defensive Protection

- Establishing national database for GRTK

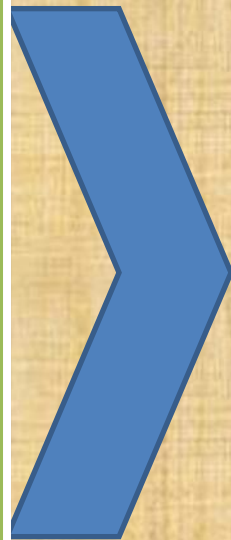
COST AND BENEFIT

▪Positive Protection

- 1.Sui Generis
- 2.Lengthy Process
- 3.Coordination

▪Defensive Protection

- 1.Simple and Effective
- 2.Coordination
- 3.Policy+political will



Immediate
Action



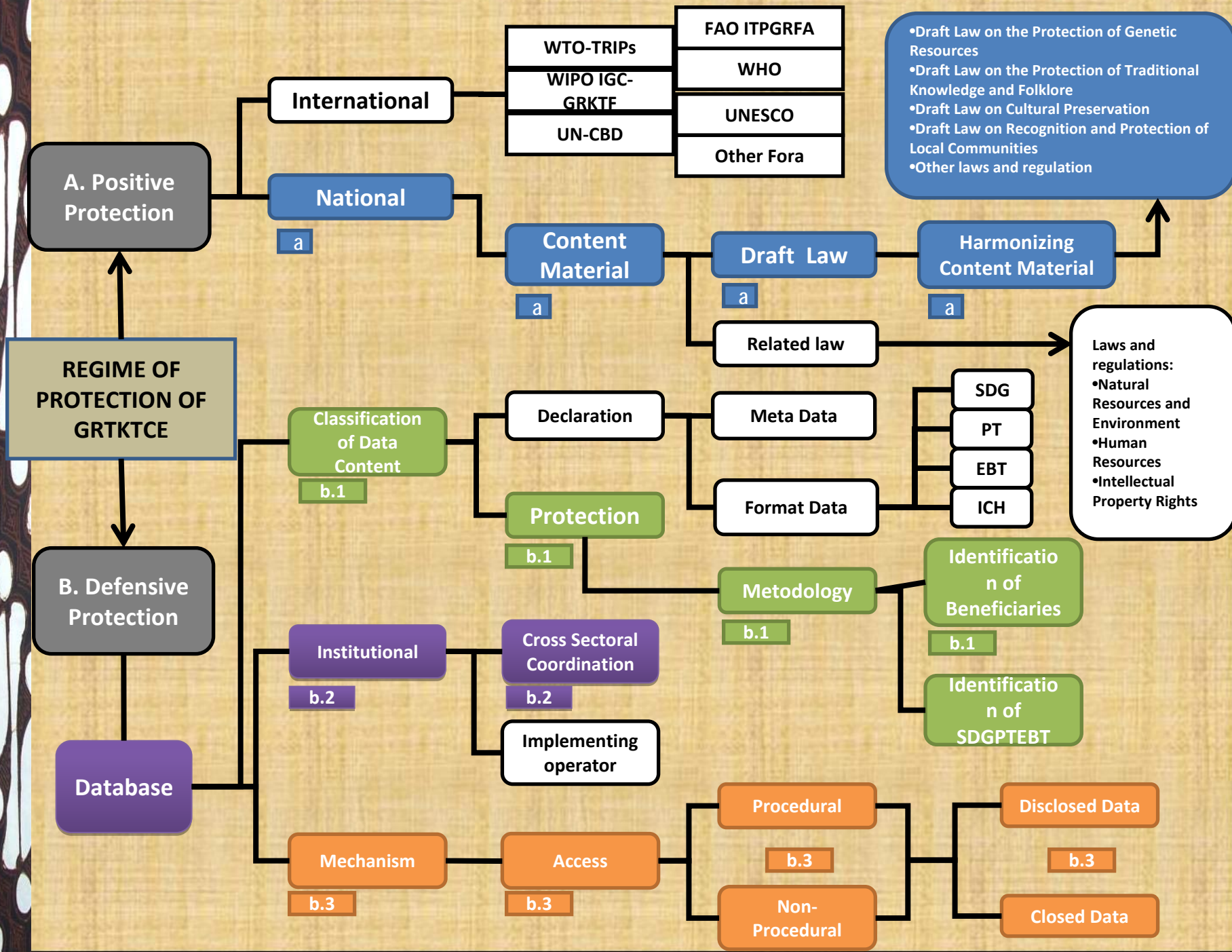
- Recorded
- Registered
- Reassured



National
Regime



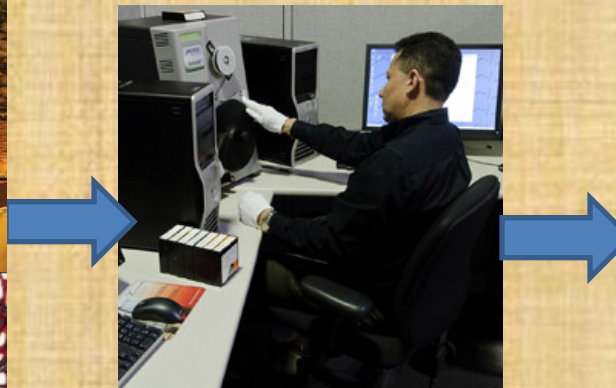
Priority



ESTABLISHMENT OF GRTK DATA BASE

Effective Measures should be taken immediately:

- Defensive Protection by establishment of GRTK Database containing indexed documents in a single centralized digital library
- Managed by an agency set up by inter-ministry with role to collect data and document and store them to the database. The database shall be in inter operability basis
- Database on metadata

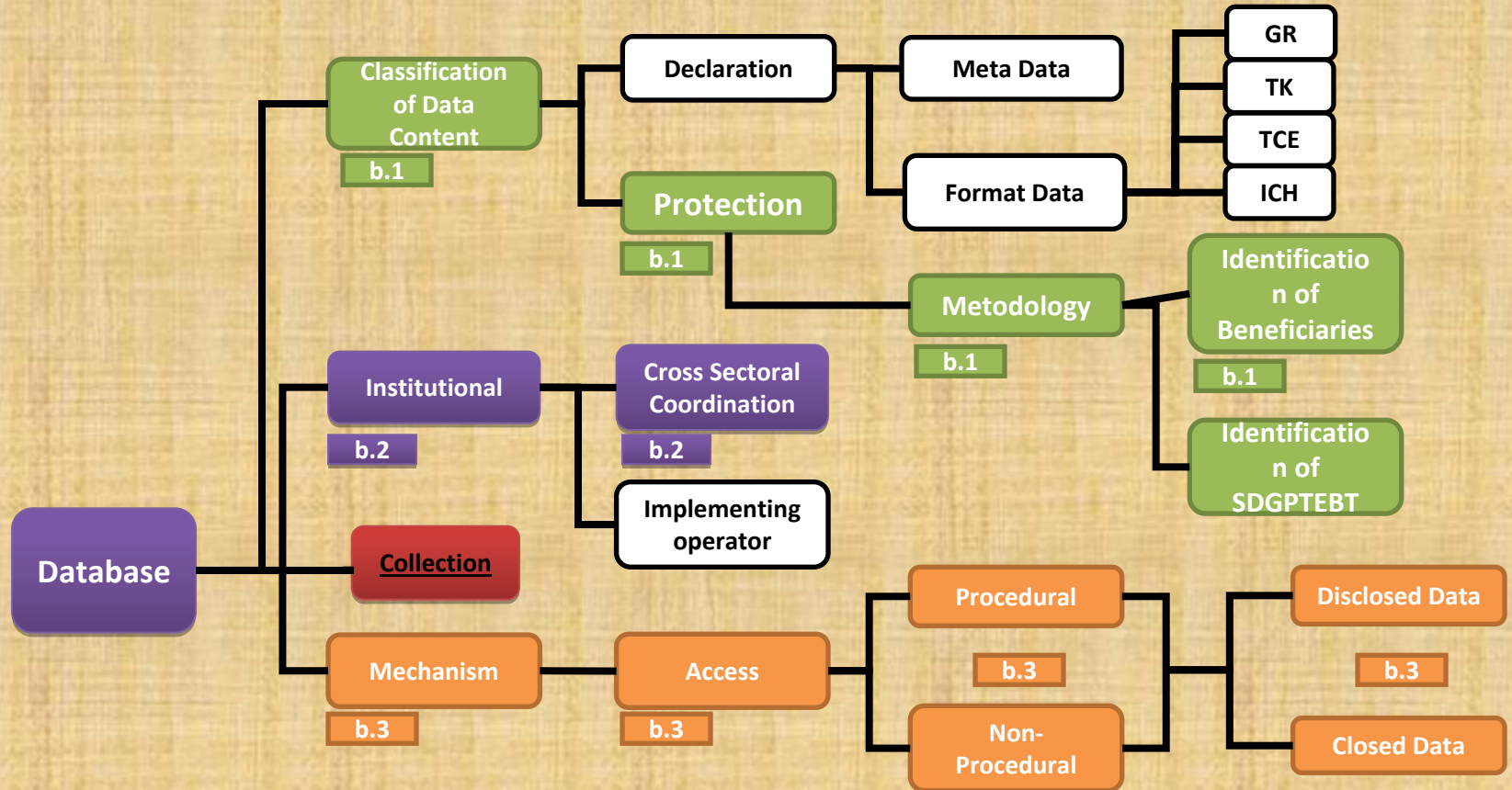


pict. source: bali.panduanwisata.com, apotekgriyafarma.wordpress.com,
ur.bestpicturesof.com, kindsofbatik.blogspot.com, iopblog.org

WHY GRTK DATA BASE SHOULD BE ESTABLISHED

- preservation or “safeguarding,” which are the identification, and documentation of GRTK in order to ensure its maintenance or viability. The objective, in that case, is to make sure that the GRTK do not disappear and are maintained.
- protection of GRTK against their misuse or misappropriation, such as their copying, adaptation or use by unauthorized third parties. The objective of protection, in short, is to make sure that the intellectual innovation and creativity embodied in GRTK are not wrongly used.

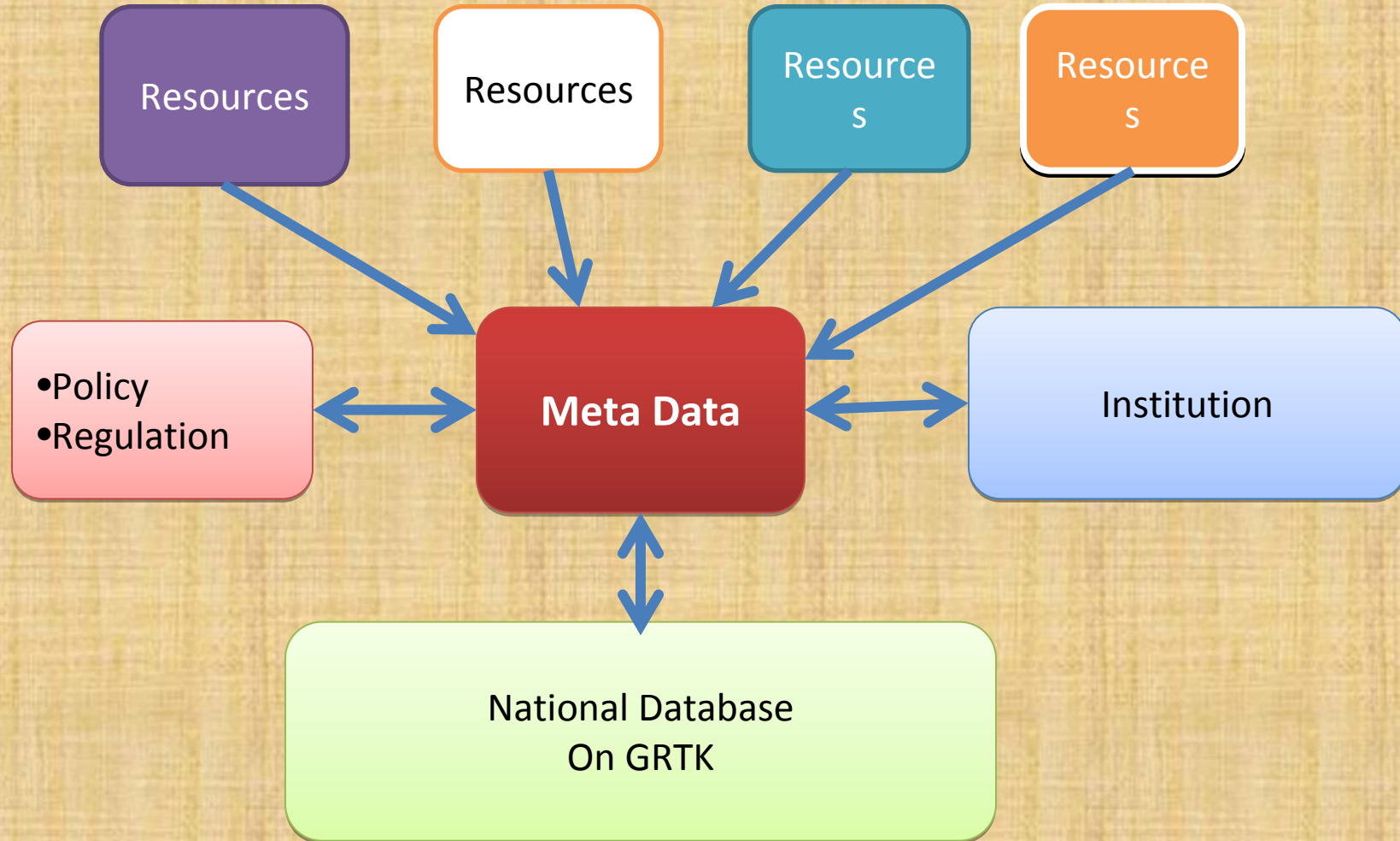
ESTABLISHING GRTKTCE DATA BASE



COLLECTION OF GRTK DATA BASE

Resources:

1. Government Institution
2. Community



THE LIKE MINDED COUNTRIES MEETING

- As the commitment of Indonesia to support and facilitate the process in WIPO Intergovernmental Committee (IGC) in establishing international legal instrument(s) on the protection of GRTKTCE;
- The First session of Like Minded Countries Meeting (LMCM) held in Bali on 23 – 27 November 2009
- The Second session of LMCM held in Bali on 27 – 30 June 2011.
- The Third session of LMCM held in Bali on 27 – 28 June 2012

THE 3RD LIKE MINDED COUNTRIES MEETING

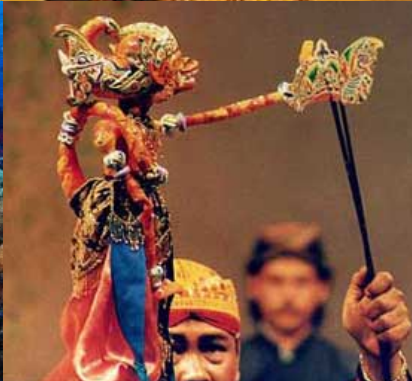
BALI, 27 – 28 JUNE 2012

- To build common perspectives and generate further recommendations on the common position of LMCs for the 22nd IGC Session in July 2012; and
- To come up with a good strategy to encourage the 41st of WIPO General Assembly in October 2012 to convene the Diplomatic Conference in 2013.
- The representatives of Like Minded Countries: Algeria, Brunei Darussalam, Colombia, Ecuador, Egypt, India, Indonesia, Islamic Republic of Iran, Jamaica, Lebanon, Malaysia, Namibia, Pakistan, Peru, Sri Lanka, Tanzania, Thailand and Vietnam
- As the preparatory meeting before the 3rd session of LMCM, the International Symposium on Ensuring Protection for GRTKF through the Creation of Database that emphasized the importance of a database was held on 26 June 2012

THE CONSULTATIVE MEETING

BALI, 29 JUNE 2012

- Following the 3rd LMCM, on 29 June 2012, the LMCs has conducted the first ever Consultative Meeting with countries by invitation, namely Australia, People's Republic of China, Norway, Switzerland, and New Zealand (New Zealand was not able to attend the Consultative Meeting due to unforeseen circumstances).
- The Meeting was chaired by Indonesia as Coordinator of the LMCs.
- The Meeting was aimed to consolidate views and bridge the interests between the LMCs and the Four Countries as well as to bring the LMCs and the Four Countries to another level of understanding and to establish common perspectives.



THANK YOU

Directorate of Economic and Socio Cultural Treaties

Ministry of Foreign Affairs of the
Republic of Indonesia

Main Building, 11th Floor

Jln. Taman Pejambon No. 6

Tel: (021) 385-8015

Fax: (021) 352-3302

Website: www.kemlu.go.id

pict. source: info-kesehatan.net, apotekgriyafarma.wordpress.com,
1unityindiversity.wordpress.com, datasunda.org, thejakartapost.com,
bali.panduanwisata.com, wnuruzzaman.blogspot.com, indonesiaberprestasi.web.id