UNIVERSITY INTELLECTUAL PROPERTY POLICIES IN INDONESIA: A STUDY OF THREE STATE-OWNED LEGAL UNIVERSITIES IN INDONESIA

V. Selvie Sinaga*

Abstract

Intellectual property has been a popular issue since the TRIPS Agreement. However, most of the issues are related to the business and the industry sectors, despite the issues which relate the education sector. As a developing country, education is an important sector for improving the qualities of human life in Indonesia. Certainly, education sector needs high cost of investment. The exploitation of University IP could be the answer of financial problems that are faced by all Indonesian universities. Since the nature of University IP involves many parties, e.g. academic staff members, students and industrial and government sponsors, its exploitation must be managed carefully. This also generates question about who should own IP created in a university environment. This paper discusses, in general, the recent development of University IP rights in Indonesia, with the focus study on three state owned legal universities (BHMN), namely University of Indonesia, Bandung Institute of Technology and Bogor Agricultural University.

Keywords: *Intellectual Property Policies, exploitation and ownership, Indonesian Higher Education Institutions*

A. Introduction

Intellectual Property (IP) is simply defined as an asset or property which is the results of human thinking process.[1] A university, with all its academic activities, undeniably has a close relationship with the IP rights. The outcomes of university academic activities are objects of IP protection. Besides, the university is also expected to have a new role as a major agent of economic growth.[2] This means universities must increase the amount of research with commercial potentials and to convert the knowledge into wealth, new enterprises, and jobs.[3] One

* Tenured lecturer of the Faculty of Law, Atma Jaya Catholic University., Jakarta. An earlier version of this paper was presented at the 3rd Annual Asian Law Institute (ASLI) Conference in Shanghai (China) in May 2006. I am grateful to the Atma Jaya Catholic University for a research grant that made much of the research for this paper possible.

1 Escoffier, Luca, 2004, 'Introduction to Intellectual Property' in *Materials of General Course on Intellectual Property-WIPO Online Training*.

2 Quoted from Lord Sainsbury of Turville's (UK Minister of Science and Innovation) speech in North West Knowledge Economy Conference (2001) "Universities have been viewed traditionally as creators of knowledge, trainers of young minds, and as transmitters of culture. To these established roles we must add a fourth: universities as a major agent of economic growth". Look in Monotti, Ann and Sam Ricketson, 2003, *Universities and Intellectual Property: Ownership and Exploitation* (Oxford University Press), p 423.

3 *Ibid*, p. 424.

way to realize this expectation is through the concept of IP.

University Intellectual Property[4] is an unfamiliar issue in Indonesia. However, the demand to be autonomous universities and independent from the government's financial support or students' tuition fee is one reason why Indonesian universities need to commercially exploit their IP rights. Besides, the exploitation of IP rights will accelerate the process of knowledge transfer from the universities to the community. Then, the exploitation of University IP rights needs clear regulation about ownership as the process of creating or inventing something in a university involves more than one party (researcher, sponsor and university). Should University IP rights be exploited commercially and earn rewards, transparent ownership policies of University IP rights will make the reward sharing easier and minimize potential conflict.

This paper discusses, in general, the recent development of University IP rights in Indonesia. Also, this paper describes the ownership policy of some leading universities in Indonesia.

B. Indonesian Regulations Concerning the University Intellectual Property Rights and its Ownership

Indonesia has seven laws related to Intellectual Property (IP), namely the Copyright Act (Law No. 19 Year 2002), the Trade Mark Act (Law No. 15 Year 2001), the Patent Act (Law No. 14 Year 2001), the Layout Design of Integrated Circuit Act (Law No. 32 Year 2000), the Design Industry Act (Law No. 31 Year 2000), the Trade Secret Act (Law No. 30 Year 2000) and the Plant Variety Protection Act (Law No. 29 Year 2000). Of the seven laws, only the Trade Mark Act has little significance in a scientific works or technologies produced in universities. Trade mark protection is concerned with marketing and distribution which is not generally conducted by universities (although universities may have 'spin-off' companies established to market and distribute their particular university technologies and works).[5] Copyrights and patents are the field most related to University IP since most of the works or inventions produced in universities are the objects of protection of both fields.

According to Article 12 of the Copyright Act, a work that is protected by the Act shall be in the fields of science, arts and literature. This article clearly defines kinds of works in those fields that shall be protected. In the context of University IP, the protected kinds include books, computer programs, and all other written works, sermons, lecture materials, addresses and other works of utterance, and visual aids made for educational and scientific purposes. Specific disciplines, like art, include songs or music with or without lyrics; dramas, musical dramas, dances, choreographic works, puppet shows, pantomimes; drawings, engravings, calligraphy, carvings, sculptures, collage and applied arts; architectural drawings, photographs,

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[4] University Intellectual Property is all the creative products of those working within universities. Please refer to Monotti, *opcit*, p. 51.

[5] Monotti, *opcit.*, p. 82.

translations, interpretations, adaptations, anthologies, data-base and other works as a result of a change in the form of medium.

There are three articles in the Copyright Act related to ownership issues. Article 6 is about who should retain the copyright ownership of a work consisting of several separate parts created by two or more persons. The article states clearly that the person who led and supervised the completion of the entire work or if there is no such person, the person who compiled them, shall be deemed to be the author who retains the copyright ownership. This article applies to situation where there is a series of collaborative research in a university. Article 7 asserts should there be a work designed by someone and realized and worked out by other persons under the designer's guidance and supervision, the author or copyright owner of the work is the designer. The designer is considered to be the author if her design is worked in detail pursuant to her instruction, not merely her idea.[6]

The last article related to ownership in this Act is Article 8, which regulates the copyright ownership of a work made within the scope of employment. Article 8 (eight) differentiates between a work made within an official service and one based on an order. Paragraph 1 states that should a work be made within an official service for another person in the scope of employment, the copyright ownership shall be retained by the party for whom and whose service the work was made, unless there has been another agreement between the two parties. It also asserts that should the use of the work be expanded beyond the official services, the rights of the author would not be lessened. The official services in this paragraph mean the relationship between Civil Servants, known as *Pegawai Negeri Sipil* (PNS), and the state-owned department where they are employed.[7] Additionally, this provision also applies to a work made by another party based on an order from a state owned department.[8] If a work is made in the scope of employment with, or based on, an order from a private institution, the author and the copyright owner is the party who creates the work, unless otherwise arranged by the two parties.[9]

It is concluded from this article that all copyright works produced by academic staffs which have a civil servant status within state universities will be owned by the universities, whereas all scientific and creative works created by academic staffs and students in the private university remain with the author of the works, unless otherwise agreed upon by both parties. This condition also applies to works of students in state universities. With regard to the transformation of some state universities into *Badan Hukum Milik Negara* (BHMN)[10] - state-owned legal

6 Elucidation of Article 7 of Copyright Act
7 Elucidation of Article 8 (Para. 1) of Copyright Act
8 Article 7 (Para. 2) of Copyright Act
9 Article 8 (Para. 3) of Copyright Act
10 To date, there have been five public universities transforming their status into state owned legal institution-Badan Hukum Milik Negara (BHMN) university (i.e. University of Indonesia, Gadjah Mada University (UGM), Bandung Institute of Technology (ITB), Bogor Agricultural University (IPB), and Indonesia Education University (UPI)). The significant impact of this transformation is autonomous status of those universities and termination of financial support from the government of Indonesia.

institution, the civil servant status of BHMN universities academic staffs will be converted into 'university employee' within a maximum of ten years. This means the provision will be inappropriately applied to BHMN universities.

Others, except the Patent Act and the Plant Variety Protection Act, have similar provision with the Copyright Act in relation to general ownership issues. The Industrial Design Act and Layout Design of Integrated Circuit Act include them in Article 7 and Article 6. While the Plant Variety Protection Act states that unless otherwise agreed, should a variety be bred under a work agreement, the employer would be the holder of the plant variety protection rights. This would not lessen the rights of the breeder.[11] Moreover, should a variety be bred under an order, the party who gives the order is considered as the holder of the plant variety protection rights. Undoubtedly, this provision may be changed if both parties agree and would not lessen the rights of the breeder as well.[12]

The Patent Act provides different treatment regarding the above mentioned issue. Article 12 (Para.1) of the Patent Act stipulates that the party entitle to have a patent of an invention produced in the scope of employment is the party who provides the job, unless there has been another agreement. Unlike the Copyright Act, the Patent Act does not distinguish between PNS and private employees. Both have to assign their patent rights to their employer. The next paragraph asserts that the provision in Paragraph 1 also applies to inventions created by either an employee that uses data and /or equipment provided in the employment. Though the work agreement between the employer and employee does not require creating new inventions, still the employer retains its patent rights.[13]

It is realized that obtaining patent rights requires more endeavor than other IP rights. And it is hard to find inventors who invent a patented object without using any resources of their employer. Therefore, without classifying the inventors on the basis of employee public or private institutions, the ownership of the patent right is on the employer's hand. However, the inventors shall be entitled to receive a just compensation by considering the economic benefits that can be obtained from their invention. The amount of compensation may be paid as a lump sum; a percentage; a combination of a lump sum and a gift or bonus; a combination of the percentage of the compensation and a gift or bonus; or any other forms agreed by the parties, the amount of which determined by the parties.[14]

Of all forms of IP rights that develop within universities, patentable inventions perhaps have the highest profile. The inventions originate particularly from research that is conducted in medical, engineering and science faculties. In many cases, they will be the product of collaborative research involving universities with either or both government and industry financial subsidy

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[11] Article 5 (Para. 2) of Plant Variety Protection Act
[12] Article 5 (Para. 3) of Plant Variety Protection Act
[13] Article 12 (Para. 2) of Patent Act
[14] Article 12 (Para.2) of Patent Act

and probably human resources.[15] Frequently, they generate higher amount of income than other IP rights.

From the above discussion, it is concluded that Indonesian IP laws have not specifically regulated University IP issues. This is understandable since the laws are intended to be general and national IP rules that comply with the Trade Related Intellectual Property Aspects (TRIPS) Agreement. However, some issues of University IP are discussed in Law No. 18/ 2002 concerning the National System of Research, Development and Application of Science and Technology Act, and Government Regulation No. 20/ 2005 concerning the Transfer of Intellectual Property Technology and Outcomes of Research and Development Conducted by Universities and Institutions of Research and Development.

Law No. 18/ 2002 focuses on the establishment of an Indonesian national system of research, development and application of science and technology that strengthens the support of science and technology for achieving the goals of the country. Article 6 (Para. 1) sets forth the university as one of science and technology institutions that functions to develop science and technology human resources.[16] In the Elucidation, science and technology human resources are explained as human resources that have proficiency, expertise and competence in the science and technology field. With respect to ownership and exploitation issues, Article 16 (Para. 1) provides that the university and research and development (R&D) institutions are obliged to transfer IP technology and the outcomes of research and development activities, which have been funded wholly or partially by the national government and/ or the provincial government, to enterprises, government or public, as long as the activities does not conflict with public order and statutory laws. This obligation is intended to utilize the university research outcomes for the country and community.

The next paragraph is aimed to govern research and development activities that have been funded by a private party. For such research, transfer of technology shall be based on the agreement that has previously been made with the private party.[17] Universities and R&D institutions are entitled to expend the income generated from transfer of technology and/or science and technology service activities.[18] This provision expects universities or R&D institutions to be gradually independent[19] and to not only rely on the government's financial subsidy.[20]

Paragraph 4 of Article 16 requires that the provisions stipulated in paragraphs 1, 2 and 3 will be governed further in a government regulation. After waiting for three years, the Government Regulation No. 20/2005 concerning Transfer of Intellec-

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[15] Monotti, *opcit.*, p. 60.
[16] Article 7 (Para. 1) of Law No. 18/ 2002.
[17] Article 16 (Para.2) of Law No. 18/ 2002.
[18] Article 16 (Para.3) of Law No. 18/ 2002.
[19] For many years, public universities and R&D institutions (e.g. LIPI & BPPT) have received full financial support from the government of Indonesia, which makes those institutions dependent and obligated to give the income that generated from their activities to the government.
[20] Elucidation of Article 16 (Para.3) of Law No. 18/ 2002.

tual Property Technology and Findings of Research and Development Conducted by Universities and R&D Institutions has been passed by the President of Republic of Indonesia on 19 May 2005. Unlike the Law No. 18/2002 that only provides the general rules regarding exploitation of research funded by central and local governments, the Government Regulation provides a clearer regulation concerning the ownership and exploitation of University IP.

The Government Regulation clearly states that the ownership of IP rights and the findings of R&D activities which are produced within universities and R&D institutions, and which are fully funded by the local and/or central government belongs to the government.[21] Should the research be jointly funded by the government and another party, both are entitled to own the university IP rights and research findings.[22] Article 6, further, provides that universities and R&D institutions shall be prohibited to transfer the ownership of their IP rights and research findings. However, this condition does not remove the rights of the researcher, the university and the R&D institution to be acknowledged as the inventor or creator. They are also entitled to have financial rewards from the exploitation of the inventions.[23]

Concerning the exploitation of the research findings and university IP rights, Article 8 provides that the government has the power to determine and control the exploitation of those rights. In Article 9,each party in a joint ownership has the rights to hold the ownership proportionate to the agreed contribution, to provide a third party a license and to utilize the invention for research and development activities, to receive a reward proportionate to the party contribution, and to find legal protection for the above mentioned rights.[24] In the event one party exploits the IP commercially, the other party also receives a royalty or reward compliant with the proportionate contribution that is agreed.[25] However, although the government has the power to control the IP rights, the management of those rights is given to the universities and R&D institutions,[26] which have to make efforts to legally protect the rights.[27]

As stated above, Law No. 18/2002 and Government Regulation No. 20/2005 contain many provisions related to University IP ownership and exploitation. However, all of the provisions are intended for the university IP rights created from the government (central or local) funding. Regarding private university IP rights, the government of Indonesia gives the university in question the liberty to regulate the IP policy. The private university is expected to make policy that is in line with the government statutes. The priorities should be provided to make research findings and university IP rights beneficial for the community and future R&D activities.

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21 Article 5 (Para.1) of Government Regulation No. 20/ 2005.
22 Article 5 (Para 2) of Government Regulation No. 20/2005.
23 Article 7 of Government Regulation No. 20/ 2005.
24 Article 9 (Para.1) of Government Regulation No. 20/ 2005.
25 Article 9 (Para. 2) of Government Regulation No. 20/ 2005.
26 Article 10 of Government Regulation No. 20/ 2005.
27 Article 11 (Para. 1) of Government Regulation No. 20/ 2005.

C. Ownership Policies in Some Indonesian Leading Universities

As mentioned before, University IP is unfamiliar issue in Indonesia. Although the importance of University IP as source of income has been realized, there are only few Indonesian universities which already have their own IP policy. Among them, there are three state-owned legal (BHMN) universities that have advanced experience dealing with their University IP.

1. Bandung Institute of Technology (ITB)

ITB, located in Bandung, West Java, was established on 2 March 1959. For 47 years, ITB has played a significant role in teaching science, technology and fine arts to the community. Aside from that, ITB also has a long and outstanding research tradition in the foregoing fields. Many Indonesia people consider ITB the most progressive university in the country.

Since 2000, ITB has converted its status from a public university into a BHMN university. The legal basis for the conversion is Government Regulation No. 155/2000. Concerning University IP, Article 16 of the Government Regulation asserts that IP rights are regarded as one of ITB assets. The IP rights here include patents, copyrights and other forms of IP rights owned partially or fully by ITB. Because ITB deals with research in the fields of science, technology and finest arts, most of ITB research findings are patentable objects. Of all forms of IP rights, the patent perhaps is the rights that generates the highest income. As ITB understands that University IP issues should be well managed, ITB established an Office of IPR Management (*Kantor Manajemen HKI (KM-HKI)*) in 1999. *KM-HKI* is responsible for managing, protecting and marketing all the IP rights owned by ITB.

In the context of ownership, ITB has the Decree of ITB Rector No. 139/2001 which consists of 'The Guideline for Managing Intellectual Property Rights in Bandung Institute of Technology'. The Guideline sets forth that for research activities funded by ITB, the research findings would automatically belong to ITB. As to research that is not funded by ITB, but through ITB and/or a division of ITB, the owner of the research findings is still ITB, unless there is an agreement with research sponsors. However, not all research findings or inventions will be registered by ITB. The Research Centre of ITB sets up a group of experts that provides assessment on the prospect of invention.[28] Each year, ITB selects ten best inventions to be registered under ITB.[29] And to appreciate the work of the researcher, the name(s) of the researcher(s) will still be placed in the IP documents as the inventors.[30]

The Guideline also provides that all the costs incurred in the process of registration in which ITB is the owner of the IP rights will be borne by ITB, including the annual maintenance cost for the patent. And should

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[28] 'The Guideline for Managing Intellectual Property Rights in ITB' contained in Decree of ITB Rector No. 139/2001.

[29] Interview with Mr. Ahdiar Romadoni, Head of KM-HKI ITB on 2 March 2006 in Bandung.

[30] 'The Guideline for Managing Intellectual Property Rights in ITB', *loc.cit.*

Classification of nett royalty	A ≤ Rp 100 millions	B Rp 101 millions – 500 millions	C > Rp 500 millions
Inventor	40%	33,33%	30%
Unit where the inventor works/ Laboratory	30%	33,33%	20%
ITB (via KM-HKI ITB)	30%	33,33%	50%
Total	100%	100%	100%

the invention or creation be profitable and yields a royalty, the Guideline regulates the royalty sharing as follows:[31]

2. Bogor Agricultural University (IPB)

IPB is one of Indonesia's excellent research universities focusing on tropical agriculture and life sciences. Located in Bogor, West Java, IPB was founded on 1 September 1963. After 37 years of being a public university, IPB gained its autonomous status through Government Regulation No. 154/2000. The status enables IPB to manage all the university's assets for academic excellence (including the three principal responsibilities of higher education: education, research, and community services/empowerment) and entrepreneurial purposes.[32]

Similar to ITB, the Government Regulation No. 154/2000 in article 12 (Para.5) also provides that IP rights are considered as one of the university's assets. Furthermore, Article 13 (Para. 1) states IP rights in the foregoing article are consisted of patent, copyrights and other forms of IP rights belong to the IPB entirely or partly. IPB, then, founded an Office of Intellectual Property Rights (*Kantor Hak Kekayaan Intelektual (Kantor HKI)*) in 1999[33] to administer all University IP issues within IPB. Additionally, in order to support the works of *Kantor HKI*-IPB, Rector Decree No. 209/2004 concerning Intellectual Property and Intellectual Property Rights Management Guideline in Bogor Agricultural University has been endorsed. The Guideline has a broader approach than the ITB Guideline. While ITB only deals with IP rights that are produced in research activities funded by the university, IPB concerns with IP rights resulted from three pillars of higher education (*Tri Dharma* Perguruan Tinggi) funded by IPB. The three pillars of higher education activities consist of education, research, and commu-

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[31] *Id.*

[32] 'Welcome Note', http://bima.ipb.ac.id/menuindex.htm (Accessed: 19 March 2006).

[33] When it was first founded in 1999, the name was Office of IPR and Technology Transfer Research Institute Bogor Agricultural University (KaHATI LP-IPB) under Research Institute coordination. Along with increasing of responsibility, KaHATI LP-IPB has been released from research institute with the new name: Office of IPB's IPR (*Kantor HKI-IPB*) in 17 July 2003. (For details, look at 'The History of Office of IPR-IPB', http://bima.ipb.ac.id/~haki/home.php (Accessed: 19 March 2006).)

nity empowerment.[34]

Article 5 (Para.1) of the IPB Rector Decree sets forth, for IP rights resulting from the three pillars of higher education activities and funded entirely by IPB, the rights shall be automatically owned by IPB. Moreover, Paragraph 2 asserts that IP rights resulting from the three pillars of higher education performed by an academic community using facilities and finance partly or entirely from a party outside of IPB shall be owned by IPB unless otherwise regulated by both parties correspondent with the prevailing regulation.

IPB's IPR Office is responsible for assessing substantially the commercial value of any IP that will be managed under its authority. This is important to decide the commercial strategic and legal protection of the IP.[35] If the result is positive, the IP rights shall be the assets of IPB and then the management will be conducted by the Office of IPB's IPR.[36] If the Office decides not to manage the IP rights further, then the rights may be awarded to their inventors or producers.[37]

IPB also provides that should the IP rights have been commercialized and gained a reward, after the deduction of the necessary costs, the reward shall be shared according to the proportion as follows: a) Producers/ Inventors: 30%; b) Producers'/ Inventors' working unit: 20%; and c) IPB: 50%.[38] The necessary costs comprise taxes, feasibility assessment costs, registration and maintenance fee, and commercialization expenditure.[39] All of these costs shall be the burden of IPB, as the owner of IP rights. Furthermore, if the three pillars of higher education activities involve several working units in IPB, the reward shall be shared proportionate to their contributions, and based on the arrangement between them.[40]

3. The University of Indonesia (UI)

UI is also one of the top universities which is well-known for teaching and research in the fields of social studies, arts and humanities, natural science and law. UI converted its status from a public university into BHMN university on 26 December 2000. The change of status of UI is based on Government Regulation No. 152/2000. Like two previous government regulations, Article 11 (Para. 1) of this Government Regulation also states clearly that IP rights are considered an asset owned legally by UI. Paragraph 2 explains further that the IP stated in the previous paragraph includes patent rights, copyrights and other forms of IP owned fully or partially by the University.

The Government Regulation is a *lex specialis* that governs UI in the ownership and exploitation issues of University IP. Though the Government Regulation has already classified IP rights as one of UI assets, UI still does not have a specific policy to

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[34] Article 3 of IPB Rector Decree No. 209/ 2004.
[35] Article 7 (Para.1) of IPB Rector Decree No. 209/ 2004.
[36] Article 7 (Para. 3) of IPB Rector Decree No. 209/ 2004.
[37] Article 7 (Para. 4) of IPB Rector Decree No. 209/ 2004.
[38] Article 9 (Para. 1) of IPB Rector Decree No. 209/ 2004.
[39] Article 8 (Para. 2 b) of IPB Rector Decree No. 209/ 2004.
[40] Article 9 (Para. 2) of IPB Rector Decree No. 209/ 2004.

regulate this issue. The IP Centre – Institution for Legal and Technology Studies (*Lembaga Kajian Hukum dan Teknologi*-LKHT) under the Faculty of Law of the University of Indonesia, as the organization that appointed by the Rector of UI to manage the issues of University IP rights, has proposed a draft of Rector Decree regarding the management, exploitation and protection of the rights. Unfortunately, the draft has not been legalized as yet. Since the IP Centre does not have a legal basis in exercising the authority conferred to them, it employs persuasive methods in maintaining and exploiting UI IP rights. For example, it usually comes to UI researchers and ask them to surrender their ownership on the IP rights.[41]

Because UI is a multidisciplinary higher education institution, the situation here is different than in ITB and IPB. UI finds many difficulties in manifesting the notion of IP commercialization to academic research since its staffs, who are from diverse educational backgrounds do not have a uniform mindset. Some of them are of the opinion that the commercialization of research will reduce the opportunity for a wider community to benefit from the research findings, while others think the commercialization is an answer to respond to the challenges of becoming a BHMN University.[42]

E. Conclusion

From the above discussion, we know that University IP rights are unsung issues in Indonesia. As the issues are novel, the government of Indonesia has just begun to pay attention to it by passing a small number of regulations related to the issues. However, the government only pays attention to public or government (either local or central) funded universities while private universities are allowed to have the issues unregulated or to self-regulate them.

The implementation of the regulation is far from perfection. Not many Indonesian universities are aware of the benefits of protecting, managing and exploiting (either academically or commercially) their University IP rights. Therefore, there is only an insignificant number of Indonesian universities that set clear guidelines in managing their IP rights. Among them are some leading public universities which transform their status into BHMN universities.

Concerning to the ownership issue, the government of Indonesia policy, as stated in the Acts and Government Regulations mentioned above, asserts that University IP that created or produced under the financial support of government (either local or central) shall be owned by the government. For BHMN universities, the government here is represented by the university. Should the University IP is created or produced under support of other parties partly of wholly, the ownership shall be in the hand of the university, unless otherwise agreed by the parties. For private universities, the government let the university to self-regulate this issue.

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41 Interview with Mr. Ranggalawe Suryasaladin, Head of IP Centre – LKHT University of Indonesia on 25 February 2006 in Jakarta.

42 *Id.*

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