Chapter VI

The DEVELOPMENT OF INDONESIAN INTELLECTUAL PROPERTY LAWS IN THE LEGAL REFORM ERA: BETWEEN NEED AND REALITY

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I. INTRODUCTION

It is not possible to discuss the 1998 Post Reform Intellectual Property Laws (IP Laws) in Indonesia without looking at Indonesia's involvement in the WTO *Agreement* of 1994. In the period following the WTO ratification, Indonesia indicated its commitment to the international community to adjust its national law in the fields of economy and trade to reflect the WTO agreements, including Intellectual Property Rights (IPR). Therefore, one cannot discuss Indonesian IPR system reform separately from the IP law system adopted under the TRIPs regime, with all its implications in the context of implementation in Indonesia. This paper elaborates upon some of the problems in the development of Indonesian IP Laws, specifically in relation to the discrepancy between the need to harmonize national IP Laws with multilateral agreements (TRIPs Agreement) and the reality that the development of Indonesian IP Laws does not accord with the need of traditional and local communities as a major part of Indonesia's population.

II. HISTRORICAL and PHILOSOPHICAL BACKGROUND

Globalization has brought Indonesia to the crossroads between need and reality. This is no more evident than in the area of Intellectual Property Laws (IP Laws). Following the ratification of the *Agreement Establishing the World Trade Organization* (*WTO Agreement*),[1] Indonesia made a commitment to adjust its national law to this international agreement. Therefore, in the formulation of national laws, which are supposed to be based on the needs of the Indonesian nation itself, and the philosophy of the Indonesian nation as spelled out in the 1945 Constitution, other sources had to be taken into consideration in line with the above mentioned commitment.

How did the above occur in the development of IP Laws in Indonesia?

In the *WTO Agreement*, there is an *Agreement on Trade Related Aspects of Intellectual Property Rights* (*TRIPs Agreement*). TRIPs is a "*new instrument*", as a result of the Uruguay Round negotiations.[2]

Historically, the formulation of *the TRIPs Agreement* was marked by a conflict of interest between developing countries and industrialized countries. This started in the 1970s when developing countries launched an initiative to form a *New International Economic Order* (NIEO). The aim of the NIEO was to create a mechanism in the context of facilitating the *transfer of technology* from industrialized countries to developing countries. One of the measures proposed by developing countries for obtaining access to the technology of industrialized countries protected by IPR was to reduce IPR protection in developing countries.[3] This proposal met strong opposition by industrialized countries, in face of their ongoing efforts to protect their technology and intellectual creation in the territory of developing countries.

In the Uruguay Round negotiations, industrialized countries formed a coalition with the aim of including IPR protection into the world trade system (at the time referred to as *General Agreement on Tariffs and Trade* / GATT). In November 1987, the US submitted its "*Proposal for Negotiations on Trade-Related Aspects of Intellectual Property Rights*". The proposal included the following, among other matters:[4]

> *The objective of a GATT intellectual property agreement would be to reduce distortions of and impediments to legitimate trade in goods and services caused by deficient levels of protection and enforcement of intellectual property rights. In order to realize that objective all participants should agree to undertake the following:*
>
> *(1) Create an effective economic deterrent to international trade in goods and services which infringe intellectual property rights through implementation of border measures;*
>
> *(2) Recognize and implement standards and norms that provide adequate means of obtaining and maintaining intellectual property rights and provide a basis for effective enforcement of those rights;*

(3) *Ensure that such measures to protect intellectual property rights do not create barriers to legitimate trade;*

(4) *Extend international notification, consultation, surveillance and dispute settlement procedures to protection of intellectual property and enforcement of intellectual property rights;*

(5) *Encourage non-signatory governments to achieve, adopt and enforce the recognized standards for protection of intellectual property and join the agreement.*

The above proposal indicates that IPR, which was initially not part of GATT, was proposed by the U.S. to be included in the GATT. The reason for this was the fact that the U.S. had experienced a variety of considerable losses and damage due to IPR violations resulting from trade. An example of this was the extensive piracy occurring in Indonesia of songs written by U.S. musicians, despite the Patent Law which had been in effect since 1982. This was in addition to IPR violations taking place in other countries, such as Thailand and Malaysia.[5]

Other than the U.S., the proposal also came from the *European Community* (EC). In July 1988, the EC submitted a "*Proposal of Guidelines and Objectives*", as follows:[6]

(1) *they should address trade-related substantive standards in respect of issues where the growing importance of intellectual property rights for international trade requires a basic degree of convergence as regards the principles and the basic features of protection;*

(2) *GATT negotiations on trade related aspects of substantive standards of intellectual property rights should not attempt to elaborate rules which would substitute for existing specific conventions on intellectual property matters, contracting parties, could, however, when this was deemed necessary, elaborate further principles in order to reduce trade distortions or impediments. The exercise should largely be limited to an identification of an agreement on the principles of protection which should be respected by all parties; the negotiations should not aim at the harmonization of national laws.*

The proposal of these two groups of industrialized countries was not accepted by India, which said the following:

> "*It would ... not be appropriate to establish within the framework of the GATT any new rules and disciplines pertaining to standards and principles concerning the availability, scope and use of intellectual property rights*."

India was one of the developing countries which resisted vehemently the proposal of industrialized countries to include any IPR protection provisions in the GATT. India voiced three important arguments for this. *First*, IPR owners engage in *restrictive and anti-competitive practices* which impede international trade. *Second*, it needs to be examined first whether IPR principles and standards correspond to the needs of developing countries. *Third*, it needs to be emphasized that the essence of IPR protection is its *monopolistic* and *restrictive* characteristics. IPR protection is likely to bring an extremely negative effect on developing countries, bearing in mind that 99% of all patents worldwide are owned by industrialized countries. India's standpoint was that regulation of IPR protection should be fully left up to each individual country to be done in accordance with their respective needs and conditions.[7]

In summary, it can be stated that the debate between developing countries and industrialized countries related to the inclusion of IPR protection in the GATT Agreement ended up with the industrialized countries' victory. As a result of that, the *TRIPs Agreement* as we know it today was created, and some other conventions were also adopted in the field of IPR such as the *Paris Convention* and the *Berne Convention* (the two main conventions in the field of *industrial property* and *copyright*).

As a consequence of the industrialized countries' victory in the GATT Uruguay Round on IPR, the Western IPR concepts of *property* and *ownership* were introduced into the legal discourse of developing countries, including Indonesia. This required all member states to adjust their respective national legislation to comply with the *WTO Agreement* in the post-ratification period.

Intellectual property rights, as a "right", are inseparable from economic issues. IPR is identical to the commercial exploitation of intellectual creations. IPR protection becomes irrelevant if not related to activities of the IPR commercialization process. This thesis becomes even more apparent with the phrase

"*Trade Related Aspects of Intellectual Property Rights*" (TRIPs). This phrase appears in relation to international trade issues and becomes an important part of the discussion about human intellectual creation. It is the most complete international agreement related to IPR protection.[8] Some people go even as far as saying that TRIPs is a breakthrough in international trade cooperation.[9]

As mentioned above, TRIPs was created upon the insistence of industrialized countries seeking protection for their interests in the field of intellectual property rights.[10] In the absence of IPR protection by developing countries, investors from industrialized countries are reluctant to bring in their technology and capital investment. For the U.S., IPR protection is an important requirement prior to increasing its investments in a country.[11]

The abovementioned pressure is obviously not beneficial for developing countries, including Indonesia, which still need foreign investment for their economic and industrial development. No matter how hard it was for them, developing countries finally accepted and signed the agreement.[12] Developing country governments subsequently issued statements of legitimization and justification of the abovementioned interest in the form of ratification or the drafting of national IP laws to facilitate their compliance.[13]

The above pressure exercised by industrialized countries on developing countries was in fact a materialization of the deviation that took place in the essence of the TRIPs Agreement itself. While the initial purpose of the TRIPs Agreement was only to establish minimum standards of intellectual property protection, it took a very ambitious turn towards becoming an agreement for creating an international IP law system applying relatively high standards and creating a detailed *enforcement* mechanism.[14] The TRIPs Agreement became a means for industrialized countries to create a global trade system, negatively affecting developing countries.

Based on the principle of free trade, industrialized countries attempted to create market access by reducing or eliminating non-tariff barriers. The aim of opening up market access was also to expand the scope of international trade products, including the trade of services and the regulation of trade related to intellectual property rights. When facing competition with industrialized countries, developing countries are obviously at a disadvantage due to their inadequate level of competitiveness.

What needs to be noted is that from the substantive point of view, the TRIPs Agreement sets forth provisions based on the views or concepts of Western society, which is individualistic and capitalistic in nature.[15] For instance, subjects protected by copyright are individuals. This system precludes the recognition of state or collective rights as it is done in countries with a socialist economic system.[16] Similarly, the Western system precludes the protection of local communities' or indigenous people's rights on traditional knowledge and folklore, which are generally not owned individually by members of the society concerned. As a matter of fact, this can be considered as a form of human rights violation, as firmly stated in the resolution of *The Sub-Commission on the Promotion of Human Rights of the Commission on UN Human Rights*. Following is an excerpt from the abovementioned declaration:

> "..... *since the implementation of the TRIPs Agreement does not adequately reflect the fundamental nature and indivisibility of all human rights, including the right of everyone to enjoy the benefits of scientific progress and its applications, the right to health, the right to food, and the right to self-determination, there are apparent conflicts between the intellectual property regime embodied in the TRIPs Agreement, on the one hand, and international human rights law, on the other.*"[17]

By taking a closer look, it becomes obvious that, indeed, IPR systems developed in industrialized countries are more oriented towards economic (capital) protection rather than the protection of individual interests (*creator or author*).[18] To illustrate this point, let us take for example, the case of the USA. A country which serves actively sets the direction followed with regards to individualism and capitalism. In this country, the creativity of African-Americans is protected to a lesser extent compared to the protection of the interest of white capital owners.[19] As we all know, many African-American musicians possess a high level of creativity in the field of blues and jazz. However, copyright protection is granted to creativity or ideas expressed in a certain form.[20] When African-American musicians create their jazz or blues music, they do not express it in the form of musical notation as Western classical music composers such as Mozart, Beethoven, Strauss, and others.[21] As a matter of fact, the beauty of jazz lies in the freedom of the musician to improvise.[22] It requires capital to transform it into a certain form such as sound recording or video, and so does its promotion and distribution. It is in this fixation phase that recording

companies play a very important role. It is them who require copyright protection before they record the music of African-Americans. At the end of the day, it is the recording companies who become the copyright owners, rather than the composers.[23] The name of the composer is indicated on the cassette or the video merely to comply with the moral right[24] requirement in the copyright system. However, there is no provision setting forth the protection of these moral rights under the TRIPS Agreement.[25]

The doctrine stating that copyright protects only the expression of an idea (idea-expression doctrine)[26] rather than the idea itself, opens wide the door of opportunity for imitation of the idea, and this imitation cannot be categorized as infringement.[27] Even though it is a historical fact that jazz and blues music has been known as the music of African-Americans, many white musicians have become famous because of jazz and blues. Chic Corea; John Mayal; Eric Clapton; and, even Led Zeppelin are just a few examples of this. These white musicians have not committed infringement of the copyright of black musicians because they have not copied jazz or blues songs composed by black musicians. Rather than copying, they created their own version of jazz or blues songs by imitating the creation of black musicians.

The above example of copyright illustrates the fact that copyright protection is more copyright owner oriented than author oriented.[28] The author obtains only moral right protection, which is actually not recognized in the *TRIPs Agreement*.

In relation to trade mark, the TRIPs Agreement adopts provisions on national treatment, which basically opens wide the door of opportunity to foreign companies to register their trade mark at Trade Mark Offices in any of the member states. The Agreement also requires every member state to provide protection for well-known marks. Even though the IPR system applies the territorial principle, this principle is not applicable to well-known marks. This is very closely related to the bargaining position of companies seeking international protection of the traded products.

In the context of patents, the TRIPs Agreement contains even more specific provisions concerning patentable subject matter,[29] namely setting forth that patent protection is provided for all inventions in all fields of technology, including pharmaceutical technology (pharmaceutical patent)[30] and even biotechnology.[31] It is

further reaffirmed that patent is only granted to new inventions which contain inventive steps, and are industrially applicable.

The requirement of being industrially applicable is very closely related to the issue of capital. Patent does not exist unless the invention is industrially applicable. It is obvious, therefore, that the main emphasis in protection is in fact not on intellectual creativity, but on monopolizing the individual creativity in the form of an industrial activity. It gives the impression that capital owners do not wish to lose profits obtained from managing their capital to produce inventions protected by patent right.

Further proof that the patent regime provides protection only for capital owners is the fact that not all companies applying for patents actually intend to use the patent in the production process in the country concerned. For example, a Japanese company applying for patent registration in Indonesia may not want to use the patent by investing its capital in Indonesia. The application of a certain invention is usually subject to loss and profit considerations. Ritchie notes that multinational pharmaceutical companies applying for patent registration in a country do not always actually build a factory to apply the invention concerned.[32] The only purpose of their applying for patent protection is to monopolize the pharmaceutical technology in the country concerned. Thus, the main consideration is business competition in the context of efforts to protect the capital invested in pharmaceutical research producing the pharmaceutical invention concerned.

This also proves that the issue of transfer of technology which is attributed to successful patent regime implementation policies is in fact just not true. Even though the Indonesian Patent Law requires every patent issued in Indonesia to be applied in Indonesia,[33] there is no control mechanism which helps to ensure that this requirement is met by foreign owners of a patent. In other words, the idea of transferring technology through the implementation of the patent regime is only an ideal or only an idea expressed in the law and not a reality on the ground.[34] The real issue behind the issue of transfer of technology is protection for capital owners.[35]

The above statement is supported by the fact that over 80% of patent rights issued in developing countries (*Third World*) are owned by foreign multinational companies. Out of the above 80%, more than 90% are patents that are not implemented by these companies in the countries where they are obtained.[36] In the context of patents in the field of pharmaceutical products, this is evidently highly

non-beneficial for developing countries which are in need of adequate and affordable supplies of pharmaceutical products. The blocking of patents by multinational corporations (MNCs) leads to increased prices of pharmaceutical products in developing countries,[37] as they have to import the products at a price that is fully determined by the MNCs.

These high-price pharmaceutical product imports also affect the trade-balance between industrialized countries and developing countries. Funds available in developing countries are channeled to industrialized countries in the form of royalty payments to MNCs, while they do not invest any of their capital in the developing countries. This is the painful irony of a regime called patent. And the irony turns into tragedy when it becomes obvious that the patent owned by MNCs is actually derived from the use of traditional medicinal knowledge taken from the local community living in the developing country concerned.

This is where David Vaver's idea becomes very interesting; a patent should only be granted for inventions where the implementation of this patent brings substantial benefit for the society of the country granting the patent.[38]

Coming back to the history of the TRIPs' Agreement, had India and the developing countries won the Uruguay Round negotiations, conditions in developing countries, including Indonesia, would have been a lot different from the present conditions. Indonesia is a member state and has become a participant in the implementation of the TRIPs Agreement. Indonesia's current needs relate to IPR is how to adjust national legislation to comply with international IP Law conventions. If these adjustment measures are not taken, Indonesia will find itself in a difficult position in light of the potential sanctions that can be imposed in the context of international trade based on the WTO Agreement.[39]

III. DEVELOPMENT of INDONESIAN IPR LAWS

A. The Need

In Indonesia, the formulation of IPR laws and regulations has not been based on the interest or the needs of the majority of the Indonesian population, but has been the result of the need to adjust to global trade trends. In these global trade

movements, developing countries like Indonesia do not have a choice but to accommodate the interests of industrialized countries that have extended a great amount of assistance to developing countries. In the context of their economic development, for instance, developing countries have been greatly dependent on the in-flow of foreign investment. Foreign investment brings not only capital, but also technology that is in fact needed by developing countries. Developing countries refusing to adjust to the demands of industrialized countries become isolated on the global market. Even the more so if the developing country concerned does not have a strong bargaining position.[40]

In the context of the politics of law, the groundwork for the formulation of IPR laws and regulations in Indonesia; the moving force behind the formulation of IPR laws and regulations, was a Team called *Tim Keppres 34*.[41] The task of this Team included, among other things, to draft IPR laws such as Law Number 7 of 1987 Amending Law Number 6 of 1982 on Copyright, Law Number 6 of 1989 on Patent, and Law Number 19 of 1992 on Trade Mark. These three laws have been supplemented by Laws No. 12, 13, and 14 all of which were issued in 1997. Continuous improvements were made to these three laws during the mandate of the *Tim Keppres 34*.[42]

To date, several IPR laws and regulations have been formulated and enacted in Indonesia; Law Number 30 of 2000 on Trade Secrets, Law Number 31 of 2000 on Industrial Design, Law Number 32 of 2000 on Integrated Circuit Design, Law Number 14 of 2001 on Patent, Law Number 15 of 2001 on Trade Mark, and Law Number 19 of 2002 on Copyright. All of these laws have resulted from a need for compliance with the TRIPs Agreement ratified by Indonesia in 1994 through Law No.7 of 1994.

The reference used by the above mentioned *Tim Keppres* was certainly not an IPR system of or for the Indonesian people, as Indonesia is not familiar with an individualistic-capitalistic IPR system. The Indonesian people have communal and spiritual characteristics that stand in stark contrast with the individualistic and materialistic philosophy of the IPR regime.[43] It is not hard to guess that the reference used in the formulation of Indonesia's IPR laws and regulations were international conventions such as the Paris Convention, the Berne Convention, and the like. That is why to date the IPR regime remains a stranger to most of the Indonesian community. I would go even further by suggesting that the number of law graduates who do not understand the IPR system in its entirety is substantial.

This is the basic characteristic of the IPR regime that was adopted in Indonesian laws and regulations. The formulation of IPR laws in Indonesia can be considered as the transplantation of foreign law into the Indonesian legal system. Similar to the transplantation of a human organ, if it is suitable and acceptable by the receiving body, the transplantation will have a healing effect. On the contrary, if the human body rejects the transplant organ, the result can be fatal for the patient. In a similar fashion, if the transplanted IPR laws and regulations are compatible with the Indonesian legal system, they are likely to bring benefit to the nation. However, if they are not suitable, a greater damage is likely to be done.

In fact, there is no significant proof to be found in any empirical study to date indicating that IPR laws and regulations have provided any positive impacts with regards to economic growth and the social development of developing countries.[44] Just the contrary has been the case, namely funds flowing from developing countries to industrialized countries in the form of royalties.[45] Abbott admits that IPR protection harms developing countries.[46]

The question is, why is Indonesia implementing intellectual property laws while it has been proven that the implementation of laws of this type do not fully benefit the majority of its people? The answer may be quite simple; Indonesia must adjust to international conventions in order to be accepted as a member of the international community. By doing so, Indonesia will not be isolated from the flow of global trade, which will ultimately bring a benefit for the entire Indonesian nation in the future. And this is Indonesia's need at present.

B. The Reality

In reality, the realization of the ideal aim of the formulation of Indonesia's IP Laws is not as easy as it would appear. The reality of implementing these laws does not correspond to the initial idea of formulating intellectual property laws for enhancing Indonesia's economic growth and welfare.

It has to be admitted that the implementation of IP Laws in the 1980s were successful in attracting foreign capital and the technology that came with it. However, regretfully, the in-flow of foreign capital and technology to Indonesia was not followed by economic independence. This means that from the economic point of view, Indonesia continues to be dominated by industrialized countries. This has already been predicted by Dos Santos. In his writings, Dos Santos states that the

relationship between dominant (donor) countries and dependent countries is an unequal one. Through relations of indebtedness and capital exports in the context of international trade, the economic surplus generated by dependent countries flows and is moved to dominant countries through profit repatriation, royalty payments, technical assistance fees, and the like.[47]

The industrial development of developing countries, including Indonesia, is highly affected by the demands of transnational companies which seek to protect the technology they have brought in with the capital they invest in the developing country. In order to legitimize these demands, they propose the theory that IPR protection can potentially stimulate economic growth of a country through investment and technology transfer programs. This theory has been accepted by followers of the modernization school of thought in developing countries, including Indonesia.[48] Unfortunately, there is no significant evidence in any empirical study to date to prove that IP Laws bring any positive impacts with regards to economic growth and social development for developing countries.[49] Just the opposite has been the case, with funds of developing countries flowing to industrialized countries in the form of royalty payments.[50] Even today, several years following the implementation of the IPR regime, Indonesia is still in a difficult economic situation. While it is true that this difficulty has been caused by various factors, it is obvious that the IPR system implemented has not been able to significantly contribute to reducing the economic difficulties being faced today.

LaDuke is of the opinion that in the dependence between industrialized countries (centre) and developing countries (periphery) there is a potential for damage for developing countries. The extent of this potential damage can be foreseen based on colonialist practices of the past, which are:

> *"…. characterized by the appropriation of land and resources from indigenous nations for the purpose of the "developing" of the US and Canadian economies and, subsequently, the "underdeveloping" of indigenous economies. The resulting loss of wealth (closely related to loss of control over traditional territories) has created a situation in which most indigenous nations are forced to live in circumstances of material poverty."*[51]

Coming back to the theory that "IPR protection can stimulate the economic growth of a developing country through investment and transfer of technology programs", proposed by supporters of IPR, it rather appears to have a tendency

towards protecting their economic interests. When IPR owners sell products to developing countries, they want to make sure that their technological creation accompanying these products is not imitated by developing countries. They want monopoly over invention, design, trade mark, and other intellectual property rights. IPR is the perfect means for creating this monopoly.

In the face of the above described demands or wishes of transnational companies, developing countries find themselves in a disadvantageous position. They are facing difficulties in obtaining foreign exchange to finance planned development, and the lack of technology needed to bring these developments to fruition. Under these conditions, the respective governments of developing countries are compelled to provide various facilities and incentives for the in-flow of foreign capital in order to meet the need for technology and capital to implement their development plans.

As a further consequence of dependence on capital and technology, developing countries are unlikely to ever achieve an advantageous position in their interaction with industrialized countries. To illustrate this point, let us take for example the economic recovery financed by the *International Monetary Fund* (IMF), requiring Indonesia to accommodate the IMF's wishes. The Letter of Intent signed by the Indonesian Government is obvious proof of Indonesia's high level of dependence on foreign aid.

Moreover, Indonesia was unable to refuse when it was required to use a major part of the funds obtained from the IMF to pay foreign consultants appointed by the IMF, while Indonesia was in great need of these funds for other, more important matters.[52] At the same time, the fees payable to foreign consultants were treated as part of Indonesian's loan repayment obligation, even though the assignment of the foreign consultants was in the IMF's own interest.

Another fact related to the difficulty in implementing an IPR system in Indonesia is the substance of the IPR system itself, for instance in the patent system as set forth in the Indonesian Patent Law. For the Indonesian people in general, the procedure for obtaining a patent is not an easy one. It starts with the very initial phase, namely the process of finding new patentable technology. One of the requirements of patentability includes inventive steps or certain research resulting in novel, non-obvious, and industrially applicable inventions.[53] These steps are usually taken by researchers, at universities, research institutions, research &

development departments of a company, and the like. This kind of research certainly requires technological skills, supporting facilities, and infrastructure, including adequate supporting resources and funds. It is a fact that budget allocations for research and development in Indonesia are relatively inadequate for producing patentable inventions of high economic value. These facts prove that the Indonesian Patent law is only useful for handling patent applications submitted by foreign companies, both those operating in Indonesia as well as those which register only to protect their products that are going to be traded in Indonesia.[54]

Patent is an active protection regime, which is one of the most evident hurdles for the Indonesian people in general. The patent regime requires people to take an active part by applying for protection. Local communities seeking patent protection are required to take various administrative steps for registering at the Patent Office.[55] Prior to that, they have to prepare a document containing the specification of the patent and of the claim for protection applied for.[56] It is based on these requirements that Steven M. Rubin and Stanwood C. Fish conclude that: *"patents are costly and require great expertise to initiate, maintain, defend, and license"*.[57] Even though the preparation of the documents can be delegated to a patent consultant, it does not guarantee that local communities are likely to be interested in completing all of the requirements that they have to.[58]

The following provisions indicate the high degree of complexity contained in the process for obtaining patent protection, including, among other things:

1. In order to obtain protection, inventors must apply to the state through the Patent Office to obtain a patent right.[59] Patent applications are subject to a fee the amount of which is determined by the Government.

2. Prior to submitting an application, inventors or applicants must prepare a complete set of documents to meet the requirements, especially documents describing the claim, the description of the invention, images (if needed), and a short description of the invention to be protected.[60]

3. In the event of another party's objection to the application concerned, the inventor or the applicant must take an active part and file a counter-objection in order for their application not to be rejected by the Patent Office.[61] Even though the inventor's counter-objection is a right, it is also in the inventor's best interest to file the same for consideration by the Patent Office for approving the application.

4. Before the further process of examination by the Patent Office, the inventor or applicant must apply for a substantive examination to the Patent Office no later than 36 months (3 years) as of the date on which the patent application is received, and a fee must be paid.[62]

5. If the Patent Office finds that there are insufficiently clear and incomplete matters in the application, the inventor or applicant must provide an explanation or supplement the application with the incomplete information. If this is not done, the application risks being rejected because incomplete applications are deemed to have been withdrawn by the applicant.[63]

6. If a patent application is rejected, the inventor or applicant can file an appeal if the rejection is based on substantive factors.[64] The appeal must be filed within 3 months as of the date of sending the letter notifying the rejection.[65]

7. After a patent right is obtained, the inventor must pay an annual fee. Failing to do so means that the patent right concerned is null and void.[66]

8. The patent right obtained is still open to cancellation due to a suit from another party. If there is a claim for cancellation, the patent right owner must defend it before the Commercial Court.[67]

All of the above indicate the active role required of inventors or patent owners to obtain or maintain their patent rights. Provisions of this type are unknown in and are not suitable for the local traditional communities in Indonesia. The people in general do not understand that there is a protection mechanism for intellectual property which are treated as property and provide '*owners*' with certain rights.

Another fact related to the implementation of IPR in Indonesia concerns the position of IPR itself as an individualistic and monopolistic regime. This kind of regime is contradictory to the character of Indonesian society, which is collective in nature and greatly values living in harmony with other human beings.

An interesting question may arise, namely, does the Indonesian society which possesses traditional knowledge really care that it has the right to the economic benefit for the use of this knowledge? Research conducted in various regions, such as

Bali, Lombok, and Central Java has proven that not a single traditional medicine person has the intention of monopolizing or prohibiting other parties from using their medicinal formulae. Just the contrary is true, namely they who possess the knowledge try to disseminate this knowledge so that other people can make use of it. They do not pay any attention to whether other people will commercialize '*their*' knowledge or not.

The communal nature of society makes it difficult for its members to accept IPR concepts which emphasize individual rights.[68] It is not an issue for society members if somebody else imitates their creation, either in the field of arts or in other fields. In fact, it is hard for them to understand why other people would have to be prohibited from using their creation? In the life of the Balinese community, for example the principle of *catur purusharta* prevails, namely: *dharma, artha, kama, moksa*. The *dharma* principle creates a system of values or norms which require a person to do things that are useful for other people. In the field of science, the *adnyanayoga* principle motivates a person to share knowledge with other people, with the aim of empowering them. Imitation is a way to acquire knowledge from another person. No wonder then that IPR concepts appear rather strange to the Balinese community. Monopoly, or put in a more polite way, the exclusive right for its owner, is a dominant IPR concept. For the Balinese community, prohibiting other parties from using their (individual) creations is a strange thing to do, because they themselves have learned by imitating other people's work.

Furthermore, the *artha* principle requires a person to work persistently in order to meet one's everyday needs (possessions / *artha*). It is in the context of this *artha* principle that Balinese craftsmen exercise their art. In other words, the symbiotic relationship between *dharma* and *artha* is that *dharma* creates artists who create works of art, whereas *artha* creates craftsmen who produce pieces of art by imitating the above mentioned artists. This is the reason why the Balinese are not so enthusiastic about the IPR principles being offered to them.

A similar attitude is demonstrated by the Javanese community. By observing the attitude of the Javanese community, one finds a unique pattern. This uniqueness comes from the way the Javanese look at life in general and is reflected in social behavior. Despite the fact that there are many Javanese who have been educated in the modern (read: Western) way, they still behave as Javanese. This behavior is based on the ethics and lifestyle inspired by the *Javanism* way of thinking.[69]

Every Javanese has the obligation to respect the life order. They have to accept life as it is, while striving for spiritual peace and emotional balance. Impulsive behavior and putting personal wishes first or allowing personal ambition to dominate are condemned, as this kind of behavior upsets the individual, social, and cosmic balance. It is therefore easy to understand why the Javanese are known as people who do not like to show off. The concept of *nrimo* (accept) means that the Javanese know their proper place in life. In other words, they believe in fate and are always grateful to God. The *nrimo* attitude helps the Javanese feel content with whatever they receive as their hand in life, realizing that all has been pre-destined. However, this does not mean they take an apathetic attitude towards life.

The *nrimo* is further strengthened by the *iklas* (*ikhlas* – wholehearted acceptance) attitude. This attitude reflects the willingness to detach oneself of their individuality and to adjust to the universal harmony believed to have been pre-destined.[70] The word *iklas* is also used to describe the attitude of granting something out of free will (*rila*). *Rila* is a willingness to surrender, a preparedness to surrender property, ability, and individual creation if that is required.

Aside from the above, the Javanese live their social life based on the application of two principles, namely: *rukun* (living in harmony) and *berlaku rukun* (acting in harmony).[71] The way Javanese strive to achieve the harmonious life is by requiring the individual to be prepared to put any personal interests second, and if necessary, even to give up their individual rights for the sake of consensus. People insisting on their own rights are considered to be persons who "are only after their own benefit in an egotistic manner.[72]

The standard applied in Javanese philosophy of life is a pragmatic value in achieving a certain psychic condition, namely peace of mind, harmony, and spiritual balance. This spiritual attitude of the Javanese community stands in stark contrast with the philosophy of an individualistic Western society. In the Javanese view, it is not good at all to take on an excessively egocentric behavior.

The Sundanese community has a similar view. According to the Sundanese, human beings should be aware that they are only a tiny part of nature, society, and the *supernatural*.[73] Therefore, it is considered inappropriate for a person to take themselves too seriously. If a person possesses knowledge or the ability to prepare a traditional medicine, they are unlikely to monopolize the use of this knowledge or ability for their own economic interest by monopolizing the knowledge as would be

the case with conventional IPR concepts. They have been passing on this knowledge for many years, from generation to generation.

The Javanese, the Sundanese, and the Balinese, all possess traditional medicinal knowledge, which is intellectual property, and if exploited, could potentially produce a lot of money for them. However, the Javanese, Sundanese, and Balinese in general do not even understand what intellectual property actually means let alone how it might be protected by law.

Indonesian traditional communities in general do not know abstract concepts, including the concept of intellectual property rights. It never occurs to Indonesian traditional communities that intellectual creation is property as conceptualized by Westerners.

The Indonesian view of objects is concrete in nature. Indonesians do not know property law as reflected in the *zakelijke rechten* and *persoonlijke rechten* concepts of Western societies.[74] Briefly, the Indonesian people's view of property rights is totally different from that of the Western societies. In property related disputes, the community concerned submits it to the Traditional Chief (Traditional Judge). The traditional judge is the one who decides whose interests need to be protected.

In view of intellectual property rights, Indonesian indigenous communities never consider these rights as a property owned by an individual, let alone in the context of an intellectual property concept as intended in the TRIPs Agreement. The latter concept has been the result of efforts made for the internationalization of the IPR regime in the context of international trade. The motive behind the TRIPs Agreement has been the protection of intellectual rights of industrialized countries in developing countries.[75] This is described by Ruth L. Gana as follows:

> *"Internationalization (of IP) refers to the universal model or global model of intellectual property law made mandatory by the provisions of the TRIPs Agreement. Under this model, country who previously did not offer protection for intellectual property in the forms recognized in European and American legal systems must now enact substantive laws to conform to this model. In addition, some countries must create entirely new structures, ranging from courts to copyright and patent office, to administer these new laws. Finally, these countries must develop intellectual property jurisprudence substantially similar to what currently exists in the United States and*

Europe in order to nurture the success of their new intellectual property laws."[76]

Obviously, it has never occurred to Indonesian traditional or local communities to think about the prospects of internationalizing a regime which provides protection for traditional knowledge. The characteristics of this traditional knowledge are local in nature, very local culture specific, and diverse. Similarly, the possibility of protecting their traditional knowledge in the context of an effective IPR regime has never occurred to Indonesian local communities. If the Indonesian Government then created and introduced IPR laws and regulations, it clearly did not do so based on the demands of its society or their communities' aspirations, but more under the pressure and demands of globalization as mentioned by Gana above. It is therefore easy to understand why Indonesian traditional or local communities still find it hard to accept IPR concepts. These are the realities in Indonesia.

C. The Laws and the Legal System

The reform era which started in 1998 in Indonesia coincided with the post-ratification of the WTO Agreement in 1994. Hence, the need for Indonesia to adjust its commitments as undertaken in the WTO Agreement appears to have gained momentum in the form of the legal reform jargon *(reformasi hukum)*.

In this reform era, the adoption of IP laws was rather productive. Following are IP laws formulated during the reform era, in the post-ratification period of the WTO Agreement.

1. Law No. 30 of 2000 on Trade Secrets.
2. Law No. 31 of 2000 on Industrial Design.
3. Law No. 32 of 2000 on Integrated Circuits Design.
4. Law No. 14 of 2001 on Patent.
5. Law No. 15 of 2001 on Trade Mark.
6. Law No. 19 of 2001 on Copyright.

The above list becomes even longer if the ratification of various IPR conventions is added, including the ratification of the WTO Agreement itself as Law No. 7 of 1994.

The substance of the above mentioned laws fully accommodate conventional IPR concepts and provisions.[77] These are some examples of the above statement:

1. Patentability requirements (novelty, inventive step, and industrial applicability);
2. Terms of patent protection (20 years calculated from filing date);
3. Priority right;
4. Protection of well-know mark;
5. Application and administrative procedures to obtain right protection;
6. Subject matter of all forms of intellectual property right protection;
7. Related rights; and
8. many others.

All provisions in Indonesian IP Laws fully comply with international agreements in this field. This is further strengthened by the ideal aim of the adoption of the above mentioned IP laws, generally taken from theories related to the idea of IPR protection itself. These include, among other things:

1. Promote technological development, innovation, and creativity.

   This aim is based on the *reward theory* which states that by economically rewarding a creative individual; creativity, innovation, and eventually technological development will be enhanced and will move in a more favorable direction. This is expressed by Benjamin J. Richardson as follows:

   > *"Economic development and social welfare will be advanced if rewards are given for the kinds of invention and creativity that result in new products, processes and services".*[78]

   This aim is reaffirmed in Article 7 of the TRIPs Agreement as follows:

   > "*The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."*

2. The need for the transfer of technology.

   This aim is expected to be achieved based on the assumption that if technology is applied through license, it will result in the transfer of technology from the owner of the technology concerned to the licensee. This is also reaffirmed in Article 7 of the TRIPs Agreement as quoted above.

   Article 17(1) of the Indonesian Patent Law contains provisions on the obligation to implement patents in Indonesia.[79] This is one of the efforts for encouraging transfer of technology based on provisions contained in law. However, in practice it is not as simple as it may appear, especially in view of paragraph (2) of the above mentioned Article which contains an exception for the implementation of paragraph (1) hereinabove. This means that the obligation to implement a patent can be waived if the patent implementation in Indonesia does not make economic sense. Furthermore, in the absence of a control mechanism for the implementation of the abovementioned Article 17(1), it can be concluded that the aim of transferring technology based on patent protection in Indonesia remains an ideal. This has been stated by Abbott, namely that there is no evidence that the patent regime has brought any significant impacts with respect of the transfer of technology or that it has enhanced the economic growth of developing countries.[80]

3. Protection of individual property rights.

   This aim is usually based on the theory of the laws of nature for the protection of an individual's rights, as stated by Glenn R. Butterton: "*you should not take the property of another without permission*".[81] In order for this theory to be applicable, the rights of individuals are protected by law in order to prevent these from being stolen by another person. Criminal law provisions set forth sanctions for thieves. Intellectual Property Laws provide protection based an application to the State through registration and the granting of rights in the form of monopoly in the use of the same. According to Zen Umar Purba, IPR exists based on law only if there are legal auspices, shelter, and protection by the State as a public authority.[82] Protection is provided by granting a right to the owner to monopolize the

use of the IPR concerned. This opinion is expressed while quoting from the ruling of the U.S. Supreme Court in the *Zenith Radion Corp. vs. Hazeline Research* case as follows: "*The heart of legal monopoly is the right to invoke the state's power to prevent others from utilizing his discovery without his consent*."[83]

4. Law changing life style, agrarian to industrialized society.

   This aim is based on the theory that law can be used as a tool for changing social behavior. In this context, IP laws have been formulated to change the Indonesian society from an agrarian to an industrialized society, by granting economic rewards to inventors in the form of the right to monopolize technology. This aim is in line with the *reward theory* mentioned above.

5. To be a responsible member of the international community.

   This aim is based on the doctrine that promises must be kept (*pacta sunt servanda*). In this context, the Indonesian Government has made a promise to comply with international agreements in the field of IPR by ratifying various conventions. This promise must be kept by adjusting its national legislation to comply with the aforementioned international agreements.

6. Out of fear from becoming isolated.

   This aim is to be achieved through various anticipatory measures based on the *contract theory,* whereas parties to a contract will not be subject to legal sanctions if they fully comply with the agreements. One of the legal sanctions applicable for violations of international agreement such as WTO and others is the sanction of isolation in trade towards violating parties. By enacting its IP Laws, Indonesia has made a statement to the international community that IPR are properly protected in Indonesia, in accordance with international agreements. Therefore, Indonesia does not need to be concerned about the sanctions in the form of isolation in trade-related aspects of intellectual property rights.

Are the above described aims achievable? Indeed, there is no easy answer to this question. However, there are at least some indicators that can be used to measure the level of success in achieving the aims determined in the laws concerned.

The following tables provide an illustration of the status of IPR protection in Indonesia (Table1~3).

Table 1 Number of Patent Applications Received 1991-2003

Year	Domestic	Domestic PCT	Foreign	Foreign PCT
1991	34	-	1,280	-
1992	67	-	3,905	-
1993	38	-	2,031	-
1994	29	-	2,305	-
1995	61	-	2,813	-
1996	40	-	3,957	-
1997	79	-	3,939	-
1998	93	-	1,608	145
1999	152	-	1,051	1,733
2000	156	1	983	2,750
2001	210	2	813	2,901
2002	228	18	621	2,976
2003	201	1	478	2,620
Total	**1,388**	**22**	**25,793**	**13,125**

Resource: Directorate General of Intellectual Property, Annual Report 2003.

The above table clearly illustrates the overwhelming majority in the number of patent applications coming from outside Indonesia (38,918 applications) compared

to domestically submitted applications (1,410 applications). In terms of percentage, the total number of national patent applications over the 13-year period reached only 3.49% compared to those originating from overseas.

Another interesting fact to note is that since 1997, foreign patent applications filed through the *Patent Cooperation Treaty* experienced a sharp increase, from 145 applications in 1998 to 2,620 in 2003. This means that the PCT has been successful in serving foreign parties in filing patent right protection applications in Indonesia, without requiring them to file their applications directly to the Indonesian Patent Office, allowing them to file through the *Receiving Office* in the respective countries in which the application is made. This was made possible as a result of Indonesia's ratifying the *Patent Cooperation Treaty* of 1997 by Presidential Decree No. 16 of 1997.

As a matter of fact, the figure of 1,410 domestic applications does not fully reflect the actual situation. This is evident from the data on the number domestic patents having successfully passed the substantive examination process, which in the period 1991 to 2003 totaled only 122 inventions for regular patents and 324 for simple patents (*utility model*).[84]

The above table also indicates that seen from the technological point of view (*invention and innovation*), the Indonesian Patent Law has not been entirely successful in encouraging domestic researchers or inventors to make significant use of the patent protection system in Indonesia. Moreover, the data on domestic applications does not clearly indicate the actual owners of the 1,410 inventions concerned. It may well be the case that some of the owners of patents applied for at the Indonesian IPR Office are in fact foreign companies conducting business activities in Indonesia. This can be compared to the number of applications received by the Central Patent Office through several Regional Patent Offices from throughout Indonesia. Based on data available up to 2003, the total number of patents from regions was only 24 applications.[85] It can be concluded that owners of inventions originating from outside Indonesia benefit to a significantly greater extent from patent protection in Indonesia.

Who are the owners of foreign inventions applying for protection in Indonesia? According to the data provided in the following table, the majority of patent owners applying at the Indonesian Patent Office originate from industrialized countries.

Table 2 Number of Applications based on Patent Country of Origin

No	Country	Total
1	United States of America	12,245
2	Japan	7,974
3	Germany	3,887
4	Netherlands	2,275
5	United Kingdom	2,039
6	France	1,620
7	Switzerland	1,684
8	Korea	1,101
9	Taiwan	1,038
10	Australia	972
11	Sweden	856
12	Italy	561
13	Austria	273
14	Belgium	412
15	Canada	368
16	Finland	260
17	Norway	214
18	Denmark	158

Source: Directorate General of Intellectual Property, Annual Report, 2003

The above listed *countries of origin* are only a minor number of the industrialized countries dominating patent applications in Indonesia. At the same time, the average number of applications filed by applicants from developing countries ranges between 1 to 21 applications.

Under the new Industrial Design Regime introduced in Indonesia, the number of applications in 2003 reached 6,379 domestic and 1,046 foreign applications.[86] These figures indicate that under the Industrial Design Regime, the number of applicants from domestic companies is relatively higher compared to industrial design owners originating from overseas.

Under the Copyright regime, registration applications filed with the Indonesian Patent Office indicate a figure raising optimism that there are a far greater number of domestic applications compared to foreign applications as indicated in the following table. However, the table does not fully reflect Indonesia's

advancement in computer technology, as the data does not indicate the registration of computer programs originating from domestic applicants.

Table 3 Applications for Registration of Copyright 1992-2003

	Received		Registered		Rejected	
Year	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign
1992	2,887	93	1,919	69	939	20
1993	3,591	128	2,356	121	1,055	7
1994	3,738	209	2,366	143	1,093	61
1995	4,373	184	3,134	114	1,245	70
1996	4,646	294	2,869	195	1,147	38
1997	2,065	120	595	42	223	5
1998	580	26	311	6	222	20
1999	684	14	678	14	138	-
2000	1,026	23	608	10	5	-
2001	1,501	34	566	40	6	-
2002	1,877	21	1,223	29	19	-
2003	2,097	24	960	2	31	-
Total	29,065	1,170	17,585	785	6,123	221

Source: DGIP, Annual Report, 2003.

It is perhaps only the Trade Mark Law (Law No. 15 of 2001) which can speak of success in the implementation of IPR protection. The total number of Trade Mark applications in the period 1992 to 2003 reached 370,969. Out of this total, 269,112 applications were approved. The rest were rejected or were deemed to have been withdrawn.

The above quoted Trade Mark registration data indicates that Trade Mark is one of the IPR regimes already known in Indonesia. Unfortunately, there is no data available on the comparison between domestic and foreign trade marks. However, based on information obtained from a Trade Mark Office official, there is no significant difference between domestic and foreign applications.

The protection of Integrated Industrial Circuit Design (*DTST*) has been provided for in Law No. 32 of 2000. However, it is interesting to note that up to date, there has been no data available concerning the total number of registrations filed

with the Indonesian IP Office. There is even information from the DGIP indicating that up to 2005 no applications for DTST have been received. This means that this law has been formulated merely in an effort to comply with the TRIPs obligations Indonesia has rather than for any demand from potential applicants. The DTST Law is not a law genuinely needed by the community. The absence of registrations for a period of more than 5 years since the law's enactment would seem to confirm the assumption that this law is indeed not needed in Indonesia.

It can be concluded based on the above discussion that the implementation of the IPR system in Indonesia does not raise much reason for optimism, due to several factors. One of the most important and perhaps most influential factors is the disharmony among elements of the Indonesian IP legal system. According to Friedman, there are three main elements in the legal system, namely (1) substance or norms, (2) apparatus or institutions implementing such legal norms, namely the police, prosecutors, and judges, and (3) the legal culture of its people.[87]

In the context of IPR, the gap between these elements of the legal system are quite obvious, especially the gap between the norms and the legal culture. As described above, the IP law norms have been formulated based on an internationally applicable IP system through conventions such as the Paris Convention, the Berne Convention, Rome Convention, and the WTO / TRIPs Agreement. Through the ratifications, Indonesia must adjust its national legislation to these conventions.

The norms indicated in these conventions are more heavily influenced by the Western views and values of nations which have prevailed in these negotiations. An example of this has been *individual rights* and *economic rights* which has become the principal basis of the above mentioned IP system. At the same time, the legal culture of the Indonesian society is still dominated by views and values that stand in stark contrast with these individualistic Western views and values. Indonesia's local communities still uphold the values of togetherness, as reaffirmed in the Preamble of the Indonesian Constitution.

Soekarno, a keen supporter of the basic Indonesian philosophy, also stated firmly in the preparatory meetings for the proclamation of Indonesia's independence that the State of Indonesia would not be built on the foundations of capitalistic individualism, but based on the genuine Indonesian philosophy, which is *gotong royong* (working together by sharing the burden). In the *BPUPKI (Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia* – The Body for Studying the Preparation

of Indonesia's Independence) on June 1, 1945, Soekarno reaffirmed the following about the *Pancasila* basic philosophy:

> *"Jikalau saya peras yang lima menjadi tiga, dan yang tiga menjadi satu, maka dapatlah saya satu perkataan Indonesia yang tulen, yaitu perkataan "gotong royong". Negara Indonesia yang kita dirikan haruslah negara gotong royong! Alangkah hebatnya! Negara Gotong Royong!*
>
> *Gotong royong adalah faham yang dinamis, lebih dinamis dari "kekeluargaan", saudara-saudara! Kekeluargaan adalah satu faham yang statis, tetapi gotong royong menggambarkan satu usaha, satu amal, satu pekerjaan, yang dinamakan anggota yang terhormat Soekardjo: satu karyo, satu gawe. Marilah kita menyelesaikan karyo, gawe, pekerjaan, amal ini, bersama-sama!"*.[88]
>
> ["If I squeeze five into three, and three into one, I will have arrived at a genuine Indonesian phrase, namely the phrase "*gotong royong*" (working together by sharing the burden). The Indonesian State which we are about to form must be a *gotong royong* state! Amazing! A *Gotong Royong* State!
>
> *Gotong royong* is a dynamic philosophy, more dynamic than the "family principle", gentlemen! The family principle is a static view, but *gotong royong* reflects one and the same effort, one and the same meritorious work, one and the same work, referred to by the honorable member Soekardjo as: *satu karyo, satu gawe* (one and the same effort, and the same work). Let us complete this *karyo, gawe,* work, meritorious work, together!".]

Soekarno saw that togetherness, being part of the phrase "*gotong royong*", was a force that could be used as a foundation for forming the foundation of the Indonesian state.

The *gotong royong* principle itself is a concept closely related to the life of the agrarian community.[89] The spirit of helping one another contained in the phrase is reflected in the everyday life activities of agrarian communities, such as:[90]

a. Close neighbors helping each other in small household and garden work, such as building or repairing homes. The custom of seeking a neighbor's help for small work in Javanese communities is referred to as *guyuban*.

b. Providing help for friends organizing celebration on various occasions such as circumcision (*sunatan),* marriage, or other traditional celebrations. This type of help is referred to as *njurung*.

c. Spontaneous activities without being requested and without expecting a reward, with the aim of providing spontaneous help at times of hardship such as death, illness, or other types of disaster. This kind of activity is referred to as *tetulung* or *layat*.

Help provided in the above described activities is given voluntarily.[91] These activities for providing help are closely related to the religious character of the community concerned. Mulder holds the view that this religious character originates from the mystical view, subsequently filled with a religious meaning or values that came later, such as for example, Islam.

Examples of mystical views influenced by religious values, specifically Islam, are evident from the great number of words of Arabic origin such as *lahir, bathin, sujud,* and *tarekat*, used to describe mystical activities.[92] According to the mystical religious view, life in this world is only a temporary stop on the way leading to the "origins" and the "final destination". The material aspects receive little attention. The world, in which humans live, the objects they use, are never considered things that are worth pursuing. All of that is only the material world which has to be abandoned one day. There are responsibilities, of course, that human beings must assume on their journey in this life. Striving for material prosperity or for collecting property is not strongly recommended in a religious society. Real prosperity lies in social harmony and spiritual development.[93] A human being alone is meaningless. He is weak and vulnerable. Therefore, he must submit to a higher force and must adjust to the conditions, rather than go against the odds. It is better to be satisfied with less, than to strive for more and become ambitious.

The ideal spiritual attitudes such as accepting things as they are, patience, modesty, self-awareness, and simplicity are highly valued qualities of a person in social life. The resulting peacefulness and harmonious order are the proof of wisdom and the sign of God's grace.

In the above described religious society, the material advantages of individuals are not really in line with their spiritual tendency. It is not unusual, therefore, if traditional doctors who possess traditional medicinal knowledge are not easily lured by the economic benefits obtained under IPR protection. When asked to

render assistance to the sick, they wholeheartedly provide help. When asked about the medication formula, they also disclose it wholeheartedly to the enquiring person.

These characteristics are totally different to the issue of protecting the economic rights of individuals possessing rights under the IPR system.[94] Local communities' ignorance of IPR protection measures is a result of the fact that the IPR regime itself is foreign to most of such communities. IPR is an individualistic, abstract, and complex regime, while local communities are religious, togetherness oriented, concrete, and uncomplicated. This is the picture presented based on research conducted in several regions.

According to resource persons from traditional community circles, there is no need for the extension of IP laws in Lombok, simply because the local community does not need these laws. Some intellectual resource persons[95] in these regions suggest that in order to understand the local community's view of IP laws, one must first ask: "whose interests do these IP laws serve in fact?" This will greatly affect the level of effectiveness in implementing these laws. Prior to forming legal norms, the genuine needs of the community concerned must be examined carefully. Does the community concerned have a need for the provisions formulated in the law concerned? Similarly, before a law is formulated, the values to be encompassed by it also need to be agreed upon. Do these values originate from the community concerned? Values contained in a law must be agreed upon before they are included in the legal norms. Unless this is done, it is difficult to expect members of the community concerned to comply with the norms of the law concerned.

A similar view was also expressed by other resource persons in connection with IP law dissemination. When asked about the possibility of conducting patent law extension (modern IPR), he voiced the opinion that if done in the wrong manner, such extension would even contaminate the community. The implementation of IP laws should not be forced, as it would have a confusing effect on the people. They will be able to understand their own needs, when the time comes.

An *opinion leader* in Lombok stated that a law, including IP laws, must be able to provide protection to community members. If a law brings a harmful effect, it must be amended or revoked. He went further to state that the Parliament does not represent the people, because it is political in nature. It is *opinion leaders* who have the right to represent the people.[96] Extreme as it may sound, this response somewhat illustrates the gap in aspirations between law making political

institutions and the community in respect of the parties targeted in the implementation of the law.

Research in Bali concerning the implementation of the IPR regime also came up with the answer that the Balinese community does not yet perceive the IPR regime as a need. Most people in Bali are still not familiar with IP laws, despite the efforts made for the dissemination of IP laws and their enforceability by Balinese artists. However, this dissemination has not raised awareness of the importance of IPR among the artists concerned.

There are certain factors which may be considered as a cause for this lack of responsiveness on the part of artists towards the dissemination of IP laws. One of these factors is the communal culture, making it very difficult for them to accept IPR concepts, which emphasize individual rights. The community does not consider it as an issue if another person imitates their work, either in the field of arts or in any other field. They even fail to understand why such a person should be prohibited from imitating their work?

Another factor contributing to the unsuccessful dissemination of IP laws is the complicated procedure for obtaining IPR protection.[97] Community members do not (and perhaps do not wish to) understand the procedure stipulated in IP laws and regulations. In order for them to obtain IPR protection, they are subjected to certain procedures set forth by these IP laws. Even before they go as far as trying to obtain protection, the idea of protecting their creation itself is still an unknown concept to them.

According to a respondent from Bali, the legal culture of the Balinese community is not in line with the law deriving from IPR laws and regulations. This is due to the cultural difference of the supporting community. The Balinese society is religious and communal in nature, whereas IP laws adopt ideas which emphasize individualism.

The different view of community which emerges in the face of these IP laws basically reflects the difference between the view of the traditional community and Western communities.[98] The Western communities' view is based on the development theory which considers resources on this Earth as exploitable resources. Conversely, traditional communities hold the view that human beings are only custodians of this Earth's resources.

These two different views lead to a conceptual difference with regard to ownership, property, creation, and discovery, or invention. Matters considered by a modern community as individual property resulting from their own creation and invention are treated as common property by traditional communities, having been obtained and derived from its social environment.

In relation to this research, common property referred to by the community is not the '*owners*'. Under these conditions, it may never have occurred to the community concerned that there is a protection model in the form of an IPR regime that protects individual property.

It appears that the gap between the normative substance of the IPR regime and the views and values affecting the community's attitude towards the IPR regime is the dominant factor which causes the IPR protection system to be ineffective in Indonesia. Even though in their substance Indonesian IP law standards fully conform with international IPR standard norms, at the national level these international standards become a major hurdle in implementation.

It appears to evidence that the formulation of Indonesian IP laws and regulations were more influenced by Indonesia's need to adjust to global trade and economic trends, than by any aspiration of the Indonesian society.

IV. CONCLUSION

The development of Indonesian Intellectual Property Laws has been completely the result of top-down policy. IP laws have not been formulated based on the needs of the Indonesian people in general, but in response to the need for adjusting to global trade trends. This is evident from the substantive provisions of these laws, which have been brought to full conformity with international agreements, including the TRIPs Agreement, which was the primary basis for the amendment of IP laws in the post WTO 1994 ratification period. The substance of IP laws philosophically differs from the system of values still upheld by a majority of the Indonesian society, dominated by togetherness and spiritual values. Despite the fact that the fundamental principle of the Indonesian State as stated in the Preamble to the Constitution is Pancasila, which was compressed by Soekarno into the value of *gotong royong*, the substance of IP laws are predominated by

individualism, materialism, and capitalism originating from the West. This means that the direction of development, especially in the field of IPR, is still under outside influence. But, this is the situation in Indonesia, where the formulation of laws, including IP laws, is still strongly influenced by forces working through law makers. The foreign philosophical basis in the formulation of Indonesian IP laws is still stronger compared to the philosophical basis of the Indonesian people. This is the reality of Indonesia's contemporary legal politics. ***

REFERENCES

Abbott, Frederick M. "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework", *Vanderbilt Journal of Transnational Law*. Vol. 22, No.4, 198.

Abbott, Frederick. *et al*, *The International Intellectual Property System: Commentary and Materials.* The Hague: Kluwer Law International, 1999.

Butterton, Glenn R. "Norms and Property in the Middle Kingdom", *Wisconsin International Law Journal*. Vol. 15, No. 2, 1997.

Downes, David R. "How Intellectual Property Could Be a Tool to Protect Traditional Knowledge," *Columbia Journal of International Law*. Vol. 25, 2000.

Foster, Meika. "The Human Genome Diversity Project and the Patenting of Life: Indigenous People Cry Out", *Canterbury Law Review*. Vol. 7, 1999.

Friedmann, Lawrence M. *The Legal System: A Social Science Perspective.* New York: Russell Sage Foundation, 1975.

Gana, Ruth L. "Has Creativity Died in the Third World? Some Implications of the Internationalization of Intellectual Property", *Denver Journal of International Law & Policy.* Vol. 24, 1995.

Greene, K.J. "Copyright, Culture, and Black Music: A Legacy of Unequal Protection", *Hasting Communication and Entertainment Law Journal*. Vol. 21, Winter 1999.

Jain, Meetali. "Global Trade and the New Millennium: Defining the Scope of Intellectual Property Protection of Plant Genetic Resources and Traditional Knowledge in India", *Hasting International & Comparative Law Review*. Vol. 22, No.1, Fall 1998.

Japanese Patent Office. *Theory and Practice of Employee's Invention.* Tokyo: APIC-JIII, no year indicated.

Kartadjoemena, H.S. *GATT, WTO dan Hasil Uruguay Round*. (WTO and the Results of the Uruguay Round) Jakarta: UI Press, 1997.

Koentjaraningrat, *Rintangan-rintangan Mental Dalam Pembangunan Ekonomi di Indonesia*. (Mental Hurdles in Indonesia's Economic Development) Jakarta: Bhratara, 1969.

Koentjaraningrat. *Kebudayaan Mentalitet dan Pembangunan*. (Culture Mentality and Development) Gramedia, 1979.

Koentjaraningrat, *Masyarakat Desa di Indonesia Masa Ini.* (Indonesia's Contemporary Rural Community) Djakarta: Jajasan Badan Penerbit Fakultas Ekonomi, no year indicated.

LaDuke, Winona. "Traditional Ecological Knowledge and Environmental Futures", *Colorado Journal of International Environmental Law and Policy*. Vol. 5, 1994.

Long, Doris Estelle. "The Impact of Foreign Investment on Indigenous Culture: An Intellectual Property Perspective", *North Caroline Journal of International Law & Commercial Regulation.* Vol. 21, Winter 1998.

MacLeod, Dylan A. "US Trade Pressure and the Developing Intellectual Property Law of Thailand, Malaysia, and Indonesia"*, University of British Columbia Law Review* 26. Summer 1992.

McKeough, Jill and Andrew Stewart, *Intellectual Property in Australia*. Butterworths, 2nd ed., 1997.

Mulder, Niels. *Pribadi dan Masyarakat di Jawa.* (Individuals and Community in Java) Jakarta. Sinar Harapan, 1983.

Purba, A. Zen Umar. *Hak Kekayaan Intelektual Pasca TRIPs.* (Post TRIPs Intellectual Property Rights) Bandung: Alumni, 2005.

Revelos, William C. "Patent Enforcement Difficulties in Japan: Are There Any Satisfactory Solution for The United States?", *George Washington Journal of International Law and Economy*. Vol. 29, 1995.

Richardson, Benjamin J. *Indigenous Peoples, International Law and Sustainability*. Blackwell Publishers Ltd., 2001.

Risalah Sidang Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia (BPUPKI), Panitia Persiapan Kemerdekaan Indonesia (PPKI), 28 Mei 1945 – 22 Agustus 1945. (Minutes of the Body for the Preparation of Indonesia's Independence (*BPUPKI),* Preparatory Committee for Indonesia's Independence (*PPKI)*, May 28, 1945 – August 22, 1945. Jakarta: State Secretariat of the State of The Republic of Indonesia, 1995.

Ritchie, Mark. *et al.* "Intellectual Property Rights and Biodiversity: The Industrialization of Natural Resources and Traditional Knowledge", *St. Johns Journal of Legal Commentary*. Vol. 11, 1996.

Rubin, Steven M. & Stanwood C. Fish. "Biodiversity Prospecting: Using Innovative Contractual Provisions to Foster Ethno-botanical Knowledge, Technology, and Conservation", *Colorado Journal of International and Environmental Law and Policy*. Vol. 5, 1994.

Sardjono, Agus. *Hak Kekayaan Intelektual dan Pengetahuan Tradisional* (*Intellectual Property Rights and Traditional Knowledge*). Bandung: Alumni, 2006.

Soepomo, R. *Bab-bab tentang Hukum Adat.* (Chapters on Traditional – *Adat* Law) Jakarta: Pradnya Paramita, 1982.

Suseno, Frans Magnis. *Etika Jawa: Sebuah Analisa Falsafi tentang Kebijaksanaan Hidup Jawa*. (Javanese Ethics: A Philosophical Analysis of Javanese Wisdom of Life) Jakarta: Gramedia Pustaka Utama, 1999.

Suwanto, Fabiola M. "Indonesia's New Patent Law: A Move in the Right Direction," *Computer & High Technology Law Journal.* Vol.9, 1993.

Suwarsono, & Alvin Y. So, *Social Change and Development.* Jakarta: LP3ES, 1994.

Tobin, Brendan. "Redefining Perspectives in the Search for Protection of Traditional Knowledge: A Case Study from Peru". *RECIEL,* 10(1), 2001.

UNCTAD-ICTSD. *Resource Book on TRIPS and Development*. Cambridge University Press, 2005.

Vaver, David. "Intellectual Property Today: Of Myths and Paradoxes", *Canadian Bar Review*. Vol. 69, 1990.

Warnaen, Suwarsih. "Pandangan Hidup Orang Sunda: Satu Hasil Studi Awal", ("Life Philosophy of the Sundanese: Initial Study Results") *Masyarakat dan Kebudayaan: Kumpulan Karangan untuk Selo Soemardjan.* (Society and Culture: A Compilation of Articles for Selo Soemardjan) Jakarta: Djambatan, 1988.

Directorate General of Intellectual Property, *Annual Report*, 2003.

Jurnal Indonesia, 16 September 2000.

NOTES

[1] Ratification was done in the form of Law Number 7 of 1994 (State Gazette 1994-57 Supplement to the State Gazette 3564) (WTO Ratification Law)

[2] UNCTAD-ICTSD, *Resource Book on TRIPS and Development*, (Cambridge University Press, 2005), 2.

[3] See further the history of TRIPs, UNCTAD-ICTSD, *ibid.*, 2-10.

[4] UNCTAD-ICTSD, *Ibid.*, 4-5.

[5] About US damages in their international trade, see Dylan A. MacLeod, "US Trade Pressure and the Developing Intellectual Property Law of Thailand, Malaysia, and Indonesia", *University of British Columbia Law Review* 26, (Summer 1992).

[6] UNCTAD-ICTSD, *Ibid.*, 5.

[7] UNCTAD-ICTSD, *Ibid.*, 6-7.

[8] Doris Estelle Long, "The Impact of Foreign Investment on Indigenous Culture: An Intellectual Property Perspective", *North Caroline Journal of International Law & Commercial Regulation,* (Vol. 21, Winter 1998), 249.

[9] Meetali Jain, "Global Trade and the New Millennium: Defining the Scope of Intellectual Property Protection of Plant Genetic Resources and Traditional Knowledge in India", *Hasting International & Comparative Law Review*, (Vol. 22, No.1, Fall 1998), 780.

[10] H.S. Kartadjoemena, *GATT, WTO dan Hasil Uruguay Round* (*GATT, WTO* and the Results of the Uruguay Round), (Jakarta: UI Press, 1997), 252-253.

[11] William C. Revelos, "Patent Enforcement Difficulties in Japan: Are There Any Satisfactory Solution for The United States?", *George Washington Journal of International Law and Economy*, (Vol. 29, 1995), 529.

[12] Kartadjoemena uses the word "*pil pahit*" (bitter pill) to describe the existence of the pressure factor. See Kartadjoemena, *GATT Uruguay Round.*, 253.

[13] Look at the opening "Considering" in Law No. 14 of 2001 on Patents, which reads as follows: "whereas in line with Indonesia's ratification of international agreements, the accelerated development of technology, industry and trade, a Patent Law is needed to provide reasonable protection for investors." Also look at the opening "Considering" Law No. 15 of 2001 on Trademark: "whereas in the global trade era, in line with international conventions ratified by Indonesia, the role of Trademark has become very important, especially for maintaining fair business competition. For the above purposes adequate regulation is required concerning Trademark in order to provide improved services to the public." See also the opening of Law No. 6 of 1982 on Copyright as follows: "... in the context of law development *...,* and in order to encourage and protect creation, the dissemination of cultural products in the fields of science, arts and literature, and in order to accelerate the development of intelligence in the life of the nation within the state of The Republic of Indonesia ..., it is necessary to formulate a Copyright Law." Finally, see the opening of Law No. 7 of 1994 on the Ratification of the *Agreement Establishing The World Trade Organisation* as follows: "whereas in the implementation of national development, specifically in the economic field, various endeavours are required, among other things, to continuously enhance, expand, strengthen and secure the market for all products, both goods and services, including the investment aspect and intellectual property rights related to trade, as well as to enhance competitiveness, especially in international trade."

[14] Jain, "Defining the Scope of Intellectual Property Protection", 781.

[15] Refer back to Doris Estelle Long, "The Impact of Foreign Investment", 246. Vandana Shifa also notes that: "*TRIPs fail to acknowledge the more informal, communal system of innovation through which Third World farmers produce, select, improve and breed a plethora of diverse crop varieties*." Refer to Laurie Anne Whitt, "Indigenous Peoples, Intellectual Property and the New Imperial Science", Oklahoma City University Law Review, (Vol. 23, No. 1 & 2, Spring & Summer 1998). 250.

[16] Long, "*The Impact of Foreign Investment"*, 246.

[17] Brendan Tobin, "Redefining Perspectives in the Search for Protection of Traditional Knowledge: A Case Study from Peru", *RECIEL,* 10(1), 2001, 49.

[18] For instance in the case of *employee's invention* based on the "*work for hire*" doctrine, the company becomes the owner of the patent of an invention invented by its employee, especially if it is expressly set out in a contract. Japan, Germany, Australia, and the U.S. have slightly different regulations for cases when there is no agreement. On this subject, look for more information in Japanese Patent Office, *Theory and Practice of Employee's Invention*, (Tokyo: APIC-JIII, no year), and Jill McKeough, Andrew Stewart, *Intellectual Property in Australia*, (Butterworths, 2nd ed., 1997), 311-318.

[19] See further K.J. Greene, "Copyright, Culture, and Black Music: A Legacy of Unequal Protection", *Hasting Communication and Entertainment Law Journal*, (Vol. 21, Winter 1999), 339-392. Take note of the following statement quoted from the above article: *"Until recent decades, African-Americans, as a class, have been victimized by systematic takings of their property. It has often seemed particularly*

ironic (to this author) that many of our laws are preoccupied with preventing "takings" of property, while –as noted by Supreme Court Justice Thurgood Marshall- the property rights of Blacks have historically not been respected in the United States."

[20] "*Copyright law will not protect works which are not fixed in some tangible form."* See Greene, *ibid.*, p.378. See also Article 9(2) TRIPS Agreement.

[21] Sidran describes it as follows: *"The Black approach to rhythm, being a function of the greater oral approach to time, is more difficult to define in writing. Capturing the rhythms of African or modern Afro-American music with Western notation is a lot like trying to capture the sea with a fishnet. The complexity of this rhythmic approach is in large part due to the value placed on spontaneity and inherently communal nature of oral improvisasion*." Sidran dalam Greene, *ibid.*, 379.

[22] "*A good jazz band should never play, and actually never does play, the same piece twice in the same manner*," Gene Less, as quoted by Greene, *ibid.*, 379.

[23] "*The copyright regime is owner-centered, not creator centered*." Greene, *ibid.*, 356. Kofsky notes that: "*With very minor exceptions, it is Whites who own the major economic institutions of the jazz world, -the booking agencies, recording companies, nightclubs, festivals, magazines, radio stations, etc. Blacks own nothing but their own talent."*

[24] "*Moral rights are non-economic rights granted to the author of a protected work. Moral rights protect reputational rights and the creative value of the work*". See Long, "The Impact of Foreign Investment," 275.

[25] See Article 9 TRIPS Agreement.

[26] About this *idea-expression doctrine*, see among other things the notes of Greene on the opinion of John Shepard Wiley Jr., *ibid.*, 382-383. Refer also to article 9(2) TRIPS Agreement.

[27] "*Imitation is the life blood of competition*", See the commentary on *American Safety Table Co., v. Schreiber* in Greene's footnotes, *ibid.*, 381.

[28] This theory is further confirmed by the doctrine of "*work for hire*" which enables an employer to become the holder or owner of copyright on his/her employee's creation. See Long, "The Impact of Foreign Investment," 272.

[29] Article 27 TRIPS Agreement.

[30] *Report of the Appellate Body* of WTO in the dispute between US and India recommended that India should give patent protection for pharmaceutical inventions. See Frederick Abbott, *et al*, *The International Intellectual Property System: Commentary and Materials,* (The Hague: Kluwer Law International, 1999), 533-534.

[31] *Diamond, Commissioner of Patents and Trademarks vs. Chakrabarty Case (Supreme Court of USA, 447 U.S.303)* was a very important example in relation to the protection of bio-technological invention. See Abbott, *ibid.*, 29-40.

[32] Mark Ritchie, *et al*, "Intellectual Property Rights and Biodiversity: The Industrialization of Natural Resources and Traditional Knowledge", *St. Johns Journal of Legal Commentary*, (Vol. 11, 1996).

[33] Article 17(1) Law No. 14 of 2001 on Patent (Patent Law).

[34] Stated in the Elucidation to Article 17(1) of the Indonesian Patent Law. This fact has been stated by Abbott namely that there is no evidence that the patent regime has significantly influenced the technology transfer or supported the economic

growth of developing countries. See Abbott, *The International Intellectual Property System*, 8.

[35] Meika Foster noted that giant pharmaceutical corporations were always behind the issue of the importance of patent protection. They said that: *"without patent protection much of the research currently available would not exist"*. See Meika Foster, "The Human Genome Diversity Project and the Patenting of Life: Indigenous People Cry Out", *Canterbury Law Review*, (Vol. 7, 1999), 358.

[36] Ritchie, *et al.*, "Intellectual Property Rights and Biodiversity", 439.

[37]The high price of pharmaceutical products as a result of patent protection of pharmaceutical products is also expressed in Foster, "The Human Genome Diversity Project", 360-361.

[38] David Vaver, "Intellectual Property Today: Of Myths and Paradoxes", *Canadian Bar Review*, (Vol. 69, 1990), 120-121.

[39] There are at least 3 sanctions that can be imposed on Indonesia if it does not adjust to the WTO Agreement, namely: (1) change its internal laws to adjust to the WTO Agreement, (2) pay compensation to the winning State in the panel, (3) imposition of trade sanctions. See Article 19 (1) and 22 Annex 2, *Agreement Establishing the World Trade Organization* 1994.

[40] An analysis of dependency of developing countries on industrialized countries can be conducted based on the dependency theory. See Suwarsono & Alvin Y. So, *Social Change and Development*, (Jakarta: LP3ES, 1994)

[41] It has been called *Tim Keppres 34* because this Team was formed by virtue of Presidential Decree 34 of 1986 dated July 30, 1986.

[42] *Tim Keppres 34* was dissolved on October 29, 1998 by Presidential Decree Number 189 of 1998 on the Revocation of Presidential Decree Number 34 Year 1986.

[43] For more about this antinomy, please read Agus Sardjono, *Intellectual Property Right and Traditional Knowledge,* (Bandung: Alumni, 2006). (published in the Indonesian language – *Bahasa Indonesia*)

[44] Frederick Abbott, *et al. The International Intellectual Property System: Commentary and Materials*, Part One. (Kluwer Law International, 1999), 8.

[45] Suawarsono, *Social Change and Development*, 99. It is interesting to note a radio interview on Radio 97.05 FM Jakarta with Dita Indah Sari broadcast on Thursday, February 7, 2002, between 08:00 and 08:30 hours. The interview was conducted in relation to Dita's refusal to accept a US$50,000.00 reward from Nike shoe manufacturer. In the interview, Dita compared a laborer's wage at Nike Indonesia to the royalty that has to be paid to the owner of this trade mark. A laborer's wage is only 0.4% of the total sales, whereas the royalty payable is 33%. This figure is a clear illustration of the great gap between the funds circulating in Indonesia in the form of laborers' wages and the funds flowing out of the country in the form of royalties. Unfortunately, the author does not possess data or documents supporting this news. However, assuming it is correct, it proves the thesis that IPR causes funds to flow out of developing countries such as Indonesia to industrialized countries.

[46]See Frederick M. Abbott, "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework", *Vanderbilt Journal of Transnational Law*, (Vol. 22, No.4, 198), 691.

[47]Theotonia Dos Santos, "The Structure of Dependence", in Suwarsono, *Perubahan Sosial dan Pembangunan*, (Social Change and Development) 98-101.

[48] For instance, in the opening part "Considering" of Law No. 6 of 1989 on Patents it is stipulated *whereas in the context of the implementation of national development in general and specifically of economic sector development, technology plays a highly significant role in the context of efforts for the enhancement and development of industry; whereas with due consideration of the significant role of technology for such enhancement and development of industry it is necessary to … provide legal protection for the products of such activities; whereas in order to create the climate and means for the above mentioned legal protection, it is deemed necessary to forthwith establish a patent law."* The sentence in the above mentioned opening part indicates the great extent to which the U.S. IPR community has been accepted by the Indonesian drafters of the law at that time, namely that patent protection can stimulate economic development in Indonesia. See also Fabiola M. Suwanto, "Indonesia's New Patent Law: A Move in the Right Direction," *Computer & High Technology Law Journal* (Vol.9, 1993), 269.

[49] Abbott, *The International Intellectual Property System*, p.8. It could be added that in the context of patents, it is very difficult to monitor whether in reality these foreign companies implement their patents in Indonesia in the context of technology transfer within 3 years after the patent right is granted by the Directorate General of Intellectual Property Rights in Indonesia.

[50] Suwarsono, *Perubahan Sosial dan Pembangunan*, (*Social Change and Development*) 99. Revert to the notes on the Radio 97.05 FM Jakarta interview with Dita Indah Sari broadcast on Thursday, February 7, 2002, *Supra* note 46.

[51] See Winona LaDuke, "Traditional Ecological Knowledge and Environmental Futures", *Colorado Journal of International Environmental Law and Policy*, (Vol. 5, 1994), 131.

[52] Kwik Kian Gie, as reported in *Jurnal Indonesia*, 16 September 2000, stated that the greatest state expenditure as advised by IMF was among other things to finance 3 (three) foreign consultants (75 million US dollars per year), who had been appointed to deal with the Bank Indonesia issue. In addition to that, 450 thousands US Dollars to hire McKinsey as IBRA's consultant.

[53] In accordance with the provision of Article 27 (1) *TRIPs Agreement*.

[54] Relevant data is provided in the table in the ensuing part.

[55] Article 24(1) Law No. 14 of 2001 on Patens (Patent Law).

[56] Article 24(2) Patent Law.

[57] Steven M. Rubin & Stanwood C. Fish, "Biodiversity Prospecting: Using Innovative Contractual Provisions to Foster Ethno-botanical Knowledge, Technology, and Conservation", *Colorado Journal of International and Environmental Law and Policy*, (Vol. 5, 1994), 48.

[58] Local communities (especially rural communities) are almost totally unused to dealing with lawyers. Lawyers or consultants are foreign to rural community members. These communities prefer to use traditional methods for settling their disputes.

[59] Article 20 & 24(1) Patent Law.

[60] Article 24(2) Patent Law.

[61] Article 45(2) – (3) Patent Law.
[62] Article 48 & 49 Patent Law.
[63] Articles 52 & 53 Patent Law.
[64] Article 60(1) Patent Law.
[65] Article 61(1) Patent Law.
[66] Article 88 Patent Law.
[67] Article 91 Patent Law.
[68] An interview with I Ketut Wirawan, Denpasar, 11 June 2002.
[69] Niels Mulder, *Pribadi dan Masyarakat di Jawa,* (Individuals and Society in Java) (Jakarta, Sinar Harapan, 1983), 17.
[70] Koentjaraningrat, *Rintangan-rintangan Mental Dalam Pembangunan Ekonomi di Indonesia*, (Mental Hurdles in Indonesia's Economic Development) (Jakarta: Bhratara, 1969), 43.
[71] Frans Magnis Suseno, *Etika Jawa: Sebuah Analisa Falsafi tentang Kebijaksanaan Hidup Jawa*, (Javanese Ethics: A Philosophical Analysis of the Javanese Wisdom of Life) (Jakarta: Gramedia Pustaka Utama, 1999), 38-40.
[72] Robert R. Jay, as quoted in Suseno, *Etika Jawa.*, (Javanese Ethics) 40 & 48.
[73] Suwarsih Warnaen, "Pandangan Hidup Orang Sunda: Satu Hasil Studi Awal", ("The Sundanese Life Philosophy: A Preliminary Study") in *Masyarakat dan Kebudayaan: Kumpulan Karangan untuk Selo Soemardjan,* (Society and Culture: A Colletion of Articles for Selo Soemardjan) (Jakarta: Djambatan, 1988), 407.
[74] R. Soepomo, *Bab-bab tentang Hukum Adat, (Chapters on Traditional – Adat* Law) (Jakarta: Pradnya Paramita, 1982), 26.
[75] Ruth L. Gana, "Has Creativity Died in the Third World? Some Implications of the Internationalization of Intellectual Property", *Denver Journal of Internatiomal Law & Policy,* (Vol. 24, 1995), 140. The U.S. and European Communities have been the main contributors in the TRIPs Working Group prior to the adoption of the draft TRIPs Agreement in the GATT Uruguay Round (WTO). See Abbott, "Protecting First World Assets", 715-717
[76] Gana, *ibid*, 120.
[77] Conventional IPR in this paper mean *patent, trademark, copyright, trade secret, industrial design,* and *integrated circuit*, which correspond with international conventions on IPR, such as the Paris Convention, the Berne Convention, the Rome Convention, TRIPs Agreement, among others.
[78] Benjamin J. Richardson, *Indigenous Peoples, International Law and Sustainability*, (Blackwell Publishers Ltd., 2001), 9.
[79]The text of Article 17(1) of the Indonesian Patent Law is as follows: "*Dengan tidak mengurangi ketentuan dalam Pasal 16 ayat (1), pemegang paten wajib membuat produk atau menggunakan proses yang diberi paten di Indonesia*". (Without prejudice to the provision of Article 16 paragraph (1), the patent owner concerned must produce a product or apply the process patented in Indonesia.") It means that the patent right owner is obliged to use (in the manufacturing process) the patent protected invention in Indonesia.
[80] Frederick Abbott, et al, *The International Intellectual Property System: Commentary and Materials*, (Kluwer Law International, 1999), 8.
[81]Glenn R. Butterton, "Norms and Property in the Middle Kingdom", *Wisconsin International Law Journal*, (Vol. 15, No. 2, 1997), 288.

[82] A. Zen Umar Purba, *Hak Kekayaan Intelektual Pasca TRIPs (Post TRIPs Intellectual Property Rights)*, (Bandung: Alumni, 2005), h.13.
[83] Ray August, *International Business Law*, in Umar Purba, *ibid.*, 14.
[84] Directorate General of Intellectual Property, *Annual Report*, 2003, p. 53.
[85] DGIP, *Ibid.*, p. 58.
[86] DGIP, *Annual Report*, 2003, p. 51.
[87] Lawrence M. Friedmann, *The Legal System: A Social Science Perspective*, (New York: Russell Sage Foundation, 1975), p. 11-16.
[88] *Risalah Sidang Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia (BPUPKI),* (Minutes of the Preparatory Body for the Independence of Indonesia *(PPKI),* May 28, 1945 – August 22, 1945, (Jakarta: State Secretariate of the State of The Republic of Indonesia, 1995), 82.
[89] Koentjaraningrat, *Kebudayaan Mentalitet dan Pembangunan*, (Culture, Mentality and Development) (Gramedia, 1979), 59.
[90] Koentjaraningrat, *Ibid.*, 62.
[91] Andrea Wilcox Palmer, "Situradja: Sebuah Desa Priangan", ("Situradja: A Heartland Village in the Contemporary Indonesia") in Koentjaraningrat, *Masyarakat Desa di Indonesia Masa Ini*, (Rural Society in the Contemporary Indonesia) (Djakarta: Jajasan Badan Penerbit Fakultas Ekonomi, no year), 124.
[92] Mulder, *Mistisisme Jawa*, (Javanese Mysticism), 73.
[93] Mulder, *Ibid.*, 72.
[94] K.J. Greene, "Copyright, Culture & Black Music: A Legacy of Unequal Protection", *Hastings Communication and Entertainment Law Journal*, (Vol. 21, Winter 1999), 340.
[95] Interview with Husni Muadz. He is a Doctor of Linguistics, from Praya (Central Lombok). He is the Director of the Center for Language and Cultural Development (*Pusat Pengembangan Bahasa dan Kebudayaan* (P2BK), of Universitas Mataram. He is familiar with the social system of the Lombok society. In addition to that, he often acts as resource person in seminars on social issues. The interview was conducted on September 18, 2002.
[96] In the context of interview, *opinion leaders* means *informal leaders*. The interview was conducted on 17 September 2002.
[97] This view of the respondent from Bali corresponds to the view of Steven M. Rubin & Stanwood C. Fish. Rubin states that: "*patents are costly and require great expertise to initiate, maintain, defend, and license*." See Steven M. Rubin & Stanwood C. Fish, "Biodiversity Prospecting: Using Innovative Contractual Provisions to Foster Ethno-botanical Knowledge, Technology, and Conservation", *Colorado Journal of International and Environmental Law and Policy*, (Vol.5, 1994), 48. David R. Downes is of the same opinion that patent procedures are rather complex and costly. See David R. Downes, "How Intellectual Property Could Be a Tool to Protect Traditional Knowledge," *Columbia Journal of International Law*, (Vol. 25, 2000), 265.
[98] Tobin used the term *indigenous and non-indigenous populations*. See Brendan Tobin, "Redefining Perspectives in the Search for Protection of Traditional Knowledge: A Case Study from Peru", *RECIEL* 10(1), 2001, 49.