



*Economic Law, Institutional &
Professional Strengthening
Project*

ELIPS II

2002 Annual Report

Task Order 821: Indonesia Economic Law, Institutional and Professional Strengthening (ELIPS II) Activity

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INTRODUCTION

If 2002 wasn't the year of living dangerously it was the year of living with uncertainty. The year began with the end of a voluntary evacuation and the concomitant uncertainty made it difficult to plan for activities in the first quarter. Then gangs of thugs masquerading as defenders of Islam began roaming the streets threatening to expel Americans in major cities as a response to the war in Afghanistan. International press on these events had a chilling effect on the Project's ability to find short-term consultants willing to visit Indonesia. Then on October 12, 2002 three terrorist bombs went off in Bali killing over 190 people, mostly tourists. As a result of the Bali bombing there was an ordered evacuation and two long-term advisors working with ELIPS were sent to safehaven in Washington, DC. ELIPS continued to operate at a frenetic pace to provide input to now more urgent than ever anti-terrorism and anti-money laundering initiatives begun earlier. ELIPS advisors in the US were preparing materials overnight for use the next day in Indonesia. ELIPS made use of videoconferencing facilities to provide face-to-face consultant input on critical issues facing those building the statutory framework to hunt down the Bali bombers and other terrorists in the region. ELIPS advisors also had to cope with the shifting US visa policies, which endangered all overseas training programs and made it nearly impossible to get male candidates into the US for the LL.M. programs beginning in the Fall of 2002. Two male candidates had to be shifted to a US law school that started late in Fall 2002 and another three had to start their programs in Spring 2003 due to difficulties in obtaining visas.

With our eyes steadily on the goal of developing a legal and regulatory framework conducive to rapid, sustainable and equitable economic growth, we have seen Indonesia suffer major reversals this year, with political uncertainty, labor unrest, and corruption causing foreign investment to drop precipitously. Thus, the ELIPS law development component was focused in 2002 on near-term improvements in the areas of financial crime, to help Indonesia avoid Financial Action Task Force countermeasures that could cripple the country's already ailing banking and investment sectors. ELIPS also stepped up its work on anti-terrorism to help Indonesia meet international expectations in fighting terrorist acts and in going after terrorist financing. In the regulatory area, ELIPS made major progress in its work to develop management systems in the Competition Commission (KPPU) and began a major new initiative in administrative law. In education, ELIPS provided extensive law and English training to prospective LL.M. candidates, resulting in an unprecedented 12 candidates being accepted by US law schools during the year. ELIPS also delivered two graduate level law courses to students in four Indonesian cities and began developing a third course based on lessons learned from the first two courses. It has been an unpredictable year, but ELIPS, with the encouragement of USAID, has been flexibly responding to the changing situation with activities that will contribute to Indonesia's recovery.

ASSIST THE GOI IN ECONOMIC LAW

Assist the Government of Indonesia in Economic Law. ELIPS advisors worked closely with the GOI and other donors to make preparations for the implementation of the anti-money laundering law after its passage by the Parliament (DPR) in the second quarter of 2002. ELIPS has also been working with the GOI since December of 2001 on an anti-terrorism law. ELIPS IT specialists have developed a plan for putting Indonesian Supreme Court decisions online; this activity is being implemented in cooperation with The Asia Foundation (TAF). ELIPS advisors held extensive training in legislative drafting skills for staff from the Department of Justice's and the DPR's new legislative drafting units. Over 80 participants took part in an 80-hour Legislative Drafting training course held in Jakarta for Department of Justice and DPR staff; staff from other government offices and local civil society organizations also joined the training. Two staff of the DPR's legislative drafting unit and one from the unit in the Department of Justice are completing advanced legislative drafting training at the Boston University School of Law. Finally, ELIPS identified a long-term legal advisor to work at the Department of Justice, Mr. Jonathan Eddy. Mr. Eddy will start full-time in early January 2003, but has worked part-time during 2002 on various activities including the organization of a major ELIPS conference on Legal Reform scheduled for January.

Also during the fourth quarter of 2002, ELIPS advisors drafted a presidential decree on the organization of Indonesia's Financial Investigative Unit, a government regulation on witness protection, and numerous suggested rules for reporting of suspected money laundering activities. In addition, ELIPS Advisors have been working closely with Indonesian and other foreign advisors to prepare the Indonesian delegation to the next FATF meeting scheduled to take place in February 2003. A briefing book, containing an article-by-article commentary and briefs on issues that have appeared in the media, has been prepared for staff from the Department of Justice to use during hearings on the anti-terrorism law.

Activity 1. *Revision to the Company Law of 1995. The law is currently in the final phases of revision. ELIPS advisors will assist the MOJ in reviewing the work of the drafting team and in presenting the draft to the Parliament.*

Progress to date. In the first quarter of 2002 ELIPS advisors Jonathan Eddy and Douglas Branson completed a review of the current draft and submitted it for the consideration of the drafting team. In the second quarter, Mr. Eddy came to Jakarta to present ELIPS recommendations to the drafting team in a series of meetings with them. There continues to be resistance within the GOI to recommendations that would remove some of the discretionary authority from government officials, thereby making incorporating faster and less expensive. In the third quarter, students in the ELIPS sponsored legislative drafting course worked with Mr. Eddy to develop a legislative report that laid out alternatives to some of the more questionable parts of the new draft law and discussed the benefits of the proposed alternatives. As of the date of this report, the draft law had not been submitted to Parliament for consideration.

Activity 2. *Revision of the Foreign Investment Law in conjunction with Partnership for Economic Growth (PEG) advisors. This is potentially one of the most critical laws being revised in 2002 as Indonesia's future development depends heavily on foreign investment.*

Progress to date. With ELIPS support, Trisakti University held a seminar on 23 July on the draft Investment Law. The seminar focused on important issues being debated by the drafting team such as: the effectiveness of tax holidays; the need for an investment approval system; and whether any such approval system should be located in Jakarta or at the regional level.

Activity 3. *Domestic trade law is also crucial to the growth of Indonesia. Local governments have begun to interfere with inter-regional trade in an effort to raise funds. This interference has resulted in market inefficiencies and higher costs for consumers. ELIPS will work with the GOI to develop model laws for local governments and to craft national level laws which will seek to alleviate the problems caused by local governments that do not understand the effects their levies have on trade and the market.*

Progress to date. The GOI appears to have decided to combine domestic investment with foreign investment and draft only one new investment law. Work on this is outlined above under Activity 2.

Activity 4. *ELIPS will cooperate with BAPPEBTI to draft laws in addition to the warehouse receipts law related to the development of a commodities futures market in Indonesia.*

Progress to date. The warehouse receipts draft law and a legislative research report were completed in the first quarter of 2002. Both documents have been submitted to the President's office for further submission to Parliament. Further action in this area is dependent on the warehouse receipts law being passed.

Activity 5. *ELIPS will work with local governments and interested national level government agencies to develop model natural resource management laws and regulations for regional governments.*

Progress to date. The Indonesian Parliament has consistently been behind schedule in the consideration of draft laws on the legislative agenda and it seems unlikely that they will consider any new drafts in the near future. With that in mind, ELIPS will not be working in this area in 2002, but may revisit the natural resource issue in 2003 if the Parliament catches up with its legislative agenda.

Activity 6. *The MOJ has requested training for approximately 100 regional registrar office staff members in the registration of fiduciary title transfers, and we will consider providing a one-week course before the end of Year One.*

Progress to date. The GOI has been moving very slowly in establishing regional registries because of the low volume of registrations being received at the central registry in Jakarta. ELIPS feels that the low volume of registrations reflects the private sector's ambivalence about the value of the system. ELIPS may, instead, conduct a study of the effectiveness of the current system and prepare a report to the Department of Justice recommending changes in the law or registration system as indicated. If this study were to take place, it would be done during the first quarter of 2003.

Activity 7. *Provide assistance to the MOJ and Parliament to establish legislative drafting units. Professors Ann and Robert Seidman will be contracted to prepare a development plan that will define each unit's mission, goals, and organizational structure, professional training needs, and management training needs for supervisors. This program will serve as the starting point in working with the legislative drafting units.*

Progress to date. The development plan was completed in the first quarter of 2002. In accordance with the plans, staff from the Parliament and the newly formed Directorate General for Legislation of the Department of Justice took part in a two-week advanced legislative drafting course during the second quarter of 2002. The course, taught by Professors Ann and Bob Seidman, covered advanced topics as well as teaching strategies so that this group of drafters could become trainers at their respective institutions. Two staff of the Department of Justice returned from advanced legislative drafting study at Boston University in December. ELIPS Advisors are working with these staffers to develop training programs for 2003.

Activity 8. *ELIPS will support two training programs in Jakarta similar to the USF-Udayana Center for Commercial Law and Economics 80-hour legislative drafting course. The training programs will be for staff from both legislative drafting units, other government departments and staff of local civil society organizations. Up to five participants from the DPR and Department of Justice will attend an advanced four-month course on legislative drafting at Boston University in the fall of 2002.*

Progress to date. The development plan discussed under Activity 7 above proposed that ELIPS sponsor one advanced legislative drafting course for a small group of future trainers and one introductory training program for drafters. The training course for the small group of future trainers was held in the second quarter of 2002. The fourth ELIPS-sponsored Legislative Drafting introductory program ran from July 7-20. There were 80 participants coming from the DPR, various government agencies, and NGOs. The draft laws prepared during this training included: Company Law, Bankruptcy Law, Anti-Money Laundering Regulations, Foundation Law Regulations, Foreign Investment, Warehouse Receipts Regulations, Land Registration Law, and Land Distribution Law. Also providing support for this training were the Ford Foundation (support for NGO participants), the Rural Development Institute, and the University of San Francisco.

Activity 9. *The MOJ has requested seminars throughout the country to educate and engage the public on, for example, the Law on Bankruptcy, and ELIPS II will organize such seminars in the second half of Year One.*

Progress to date. Due to budget constraints ELIPS has cut back on the number of seminars to be held in 2002. Those held in the third quarter included a seminar on information and communication technology law and one on investment law (see Activity 2 above). In July, ELIPS sponsored a half-day seminar with the University of Indonesia, Padjadjaran University, and the Department of Justice on the use of data in electronic form as evidence. This topic is covered in both the draft cyberlaw prepared by Padjadjaran University and the draft e-commerce law prepared by the University of Indonesia. In addition to being important to e-commerce, cyberlaw is crucial in the prosecution of financial crimes. In preparation for this seminar, ELIPS sponsored the preparation and publication of a book of articles on information and communication technology law issues by leading Indonesian academics. The goal of the publication was to provide a foundation for higher level discussion of the policy issues concerning information and communication technology. Due to security concerns following the Bali bombing, no conferences or seminars were held in the fourth quarter.

Activity 10. *ELIPS II will work with the National Law Commission (NLC), which brings together many key players in the legal field, to identify ways to support their work, especially in the areas of economic law, education and bar development.*

Progress to date. ELIPS advisors have had many discussions with NLC members on such issues as legal education and bar development.

Activity 11. *The DPR is going to take up the issue of amending or replacing the 1945 constitution. The issues will be both substantive (the elements of the constitution) and procedural (what drafting body and how to approve the final product). ELIPS II will seek to assist with issues relating to economic law and professional strengthening on which American experience and thinking could be useful.*

Progress to date. Given the current political realities and the latest round of constitutional amendments, it is doubtful that ELIPS will be able to play any role in this area. ELIPS advisors continue to keep in contact with the Parliament and IRIS project staff working at the Parliament, should there be an opportunity for ELIPS to provide assistance with substantive or procedural issues.

Activity 12. *ELIPS will prepare and execute a comprehensive plan to address the training needs of Indonesian agencies that enforce anti-corruption and anti-money laundering laws.*

Progress to date. After a long delay, the law establishing the anti-corruption commission was passed by Parliament and the commission is likely to be established in early 2003. The ELIPS Regulatory Advisor has been working with the Officeholder Wealth Declaration Commission (KPKPN), which deals with corruption of government officials, to develop a training plan for that organization (see below). ELIPS has met several times with the Central Bank, Attorney General's Office, and the Department of Justice to offer assistance to the Financial Intelligence Unit (FIU), which was authorized by the anti-money laundering bill passed during the third quarter of 2002. ELIPS is working with other international funding organizations to insure that the FIU gets timely training support. ELIPS also prepared a study for the Attorney General's office on the feasibility of establishing a special Financial Crimes Prosecution unit. The feasibility study recommended that the Attorney General's Office wait until after an EU sponsored training is completed deciding on how many and which personnel will be assigned to the prosecution unit. Due to accusations of corruption the Attorney General's office has not followed through with the EU sponsored training and is unlikely to set up a financial crimes unit anytime soon.

Activity 13. *ELIPS will continue to provide support to the MOJ's drafting efforts on the anti-money laundering law and implementing regulations.*

Progress to date. The anti-money laundering law was passed during the second quarter of 2002. ELIPS worked closely with the Indonesian Government and with other donors to prepare the law for final passage by the Parliament. Unfortunately, Parliament made several changes in the law which will make it less effective unless the new FIU takes an aggressive approach to enforcement. ELIPS, working with a small group made up of representatives from the Department of Justice, Bank Indonesia, and the Department of Finance, drafted a presidential decree on the organization and powers of the FIU in the last quarter of the year. In early 2003 ELIPS Advisors will work on an amendment to the anti-money laundering law to bring the law into compliance with FATF recommendations.

Activity 14. *ELIPS will assist Indonesia in gathering public input for incorporation into a 1999 draft anti-terrorism law that also addresses financial crime issues.*

Progress to date. During the second quarter of 2002, ELIPS advisor Prof. Kent Roach, met several times with the very large team drafting Indonesia's anti-terrorism law. Prof. Roach also met with other government officials and representatives of civil society prior to submitting comments on an early draft. The draft has since gone through a number of revisions. Prof. Roach made a one-day visit to Indonesia in September to comment on draft version 5 of the law. In the third quarter ELIPS, working with the U.S. Embassy, sent Prof. Abdul Gani the Director General for Legislation at the Department of Justice to Honolulu to attend a seminar on anti-terrorism. Within hours of the Bali bombing on October 12, the GOI issued two emergency regulations in lieu of law dealing with anti-terrorism. One emergency regulation was, with minor alterations, draft 6 of the anti-terrorism law that ELIPS had been working with the Government on for most of the year, the other specifically dealt with the Bali incident. In the weeks following the bombing, ELIPS worked with the government to prepare draft 7 for submission to Parliament to be passed into law, replacing the emergency regulations. ELIPS has also been working on a briefing book which explains in detail how the wording for each article was arrived at and why it's important, discusses issues raised in the press about the draft and contains comparative materials. The briefing book will be used by Department of Justice staff during hearings at Parliament.

Activity 15. *ELIPS will arrange a study tour for the Chief Justice and a few other justices to observe court management systems in the United States.*

Progress to date. This activity will take place in the first half of 2003 after the completion of a draft decision on the handling of appeals from Administrative Agency decisions. The activity is being planned with Georgetown University Law School.

Activity 16. *ELIPS will assist the Supreme Court in the development of a web presence that will include selected Supreme Court decisions.*

Progress to date. ELIPS advisors Kenneth Yates and Charles Shapiro completed an initial assessment of the Supreme Court's needs and prepared a plan to make selected Supreme Court decisions available to the public via the Internet. The report was shared with The Asia Foundation, which agreed to co-fund this activity. As laid out in the Yates/Shapiro assessment, the plan includes a small amount of hardware and some training to build the capacity to distribute selected decisions into the Supreme Court's existing web site. The plan also calls for the development of a system whereby local legal publishers have access to all Supreme Court decisions so they can make them available to the legal profession and universities. ELIPS and The Asia Foundation are also planning a number of activities at Indonesian universities to use the decisions both for teaching and to develop a body of jurisprudence which will make it harder for justices to hand down arbitrary decisions, since the decisions will be screened and critiqued by legal scholars. Equipment purchase and training will take place early in 2003.

Activity 17. *ELIPS will provide assistance to the MOJ and other government agencies as they draft new and revised laws in the area of public finance and taxation.*

Progress to date. There is a great deal of activity in this area within the Parliament and the Department of Finance. Many donors have already gotten involved, and rather than duplicate efforts of others, ELIPS has opted to remain on the sidelines until an opportunity to provide unique assistance presents itself.

ASSIST REGULATORY COMMISSIONS TO FUNCTION EFFECTIVELY

Assist Regulatory Commissions to Function Effectively. During the fourth quarter of 2002, the ELIPS Regulatory Advisor, John Davis, continued working with the KPPU and the Supreme Court on drafting a regulation to govern court handling of appeals of KPPU decisions. Mr. Davis completed a draft of the proposed regulation and is working with the Partnership for Business Competition (PBC), a PEG grantee, to produce a final discussion draft and accompanying research paper. He also is working with Ken Davidson of the Federal Trade Commission (FTC) on a draft of procedural rules for the KPPU. During his time in the U.S. since evacuation from Jakarta in mid-October, Mr. Davis worked with visiting KPPU commissioners and staff on training activities, including participation in an anti-trust conference, a merger investigation workshop and a training program in the administrative functioning of the FTC. He also spent time lining up internships, training opportunities and other resources in U.S. Government agencies to be offered to members and staff of the KPPU, Anti-Corruption Commission, and consumer protection bodies.

Activity 1. *Assist the KPPU in developing guidelines for public dissemination and, separately, for use by the KPPU staff by providing comments on KPPU drafts.*

Progress to date. The KPPU has made the development of guidelines a very formal process because it is a mandate specifically given to the KPPU in the Anti-Monopoly Law. The KPPU discussed with ELIPS, the World Bank and the KPPU's own staff which paragraphs of the Anti-Monopoly Law will need to have guidelines developed for them and what donor would support development of which guidelines. The KPPU requested that ELIPS develop guidelines for: (i) definition of relevant market; (ii) vertical integration; and (iii) abuse of dominant position. These topics are all covered in the FTC-developed manual of investigative techniques. The manual will be taught to the KPPU staff by the ELIPS Regulatory Advisor and he and the FTC Advisor will jointly revise the manual and propose drafts of the three guidelines to the KPPU. This work was to have begun at the end of October but has been postponed until the evacuation of USAID staff from Jakarta is over.

Activity 2. *Support the KPPU in the conduct of a number of industry analyses through provision of industry experts and other technical advisors in order to create a set a baseline for the analysis of cases arising in those sectors and to provide the basis for the KPPU to identify cases to be investigated on its own initiative. Telecommunications including VOIP is likely to be the first sector in which such support will be provided.*

Progress to date. The ELIPS Regulatory Advisor has been organizing responses to requests for support from the KPPU to conduct investigations of the day-old-chick (DOC), telecom, dairy and wheat industries and for

information on seaports. ELIPS arranged for Steve Marks, a PEG consultant resident in Jakarta, to discuss his prior research on animal feed and DOCs with the KPPU team investigating an alleged competition law violation in the DOC industry. ELIPS also provided the KPPU with a research report on ports completed by PEG consultants two years ago. The ELIPS Regulatory Advisor has identified experts in telecom, dairy and wheat who could assist the KPPU in conducting investigative studies of those sectors but the KPPU has not yet set a date to begin such work. It is likely that the dairy industry will be the first industry to be studied. The consultants were available for deployment in December 2002, but due to the evacuation, their work has tentatively been rescheduled for April. The consultants will train KPPU staff in carrying out sectoral reviews and help them identify competitive issues in the industry that might be the subject of KPPU enforcement action.

Activity 3. *Assist the KPPU to develop a human resources management plan beginning with support for a “job analysis” to identify training needs.*

Progress to date. Beryl York and Sri Wahyu Sakti, ELIPS short-term consultants, completed a job analysis, skills identification, training needs assessment and human resources management plan at the KPPU that will be the basis for implementing ELIPS-sponsored training. The results of the training needs assessment confirm the need for the basic and advanced training in competition law and economics that has already been planned. The assessment also identified the need for skills training covering subjects such as investigative planning, trial advocacy, legal writing, budgeting, auditing, office administration, etc. One of the most important recommendations of the project was that the KPPU should develop a strategic plan. The World Bank has agreed to provide funding for a strategic planning exercise and the report of the ELIPS job analysis, skills identification, training needs assessment and human resources management plan project will be the starting point for that exercise. ELIPS has been asked by the KPPU and the World Bank to organize the preparatory work for a strategic planning retreat to be held early in 2003.

Activity 4. *Support efforts of the KPPU to provide the public with information on competition and on the KPPU’s activities and to solicit public comment and feedback.*

Progress to date. ELIPS has deferred work in the area of public education about the Anti-Monopoly Law because the World Bank has indicated that this topic will be the primary focus of its program for early 2003. The ELIPS Regulatory Advisor participated in the first of a series of workshops for socialization of the Anti-Monopoly Law sponsored by the KPPU and held in Lampung. He spoke on “Perkembangan Hukum Persaingan Dalam Konteks Peraturan Ekonomi (Development of Competition Law in the Context of Economic Regulation).” He also made a joint presentation with the FTC Advisor at a KPPU socialization workshop for Supreme Court judges in Jakarta and participated together with representatives of the KPPU in an IMF-supported training program for Supreme Court judges, where he spoke on “Perkembangan Sejalan dari Peraturan Ekonomi Dan Pertimbangan Peradilan (Parallel Development of Economic Regulation and Judicial Review).”

Activity 5. *Support development of the KPPU website by providing (i) website design and (ii) implementation of website designs and updating/maintenance of websites.*

Progress to date. The ELIPS IT specialist, Michael Andrew, has been supporting the KPPU website. He developed a new website design which is awaiting input of new content by the KPPU before being released to the public.

Activity 6. *Develop and deliver local training in investigation techniques. Identify short-term training courses in the region or in the U.S. that may be appropriate for KPPU investigators who have exhausted the locally available training resources or who have a special need for technical training.*

Progress to date. ELIPS will provide training in investigation for KPPU staff using the manual developed by former FTC Advisor Markus Meier. (Ken Davidson, the current FTC Advisor, will be involved in this training too.) Despite a diligent search, ELIPS has not been able to identify any appropriate US-sponsored training courses for investigators except in certain highly technical areas such as forensic accounting. However, the sectoral studies to be supported under Activity 2 will include training in the planning of investigations in each sector studied.

Activity 7. *Develop and deliver local training, inclusive of ICT training, on developing and using a case management system.*

Progress to date. The KPPU has not yet implemented a formal case management system because it is awaiting finalization of its procedures manual for which ELIPS provided support in the first and last quarters of 2002. Since case management is uniquely within the expertise of the FTC, no further work on it by ELIPS is appropriate until it is clear what support the FTC will provide. ELIPS will use its local knowledge to assist the FTC to organize the necessary training.

Activity 8. *Develop and deliver local training on basic research skills. Organize a Basic Skills course (Pelatihan Dasar) for KPPU professional staff covering basic economics, competition economics, competition law concepts, statistics and report drafting as the need for training in such topics is identified by the job analysis referred to above. Organize a Professional Skills course (Pelatihan Lanjutan) for KPPU staff (i.e., for the “profession” of competition analyst) and, separately, for KPPU commissioners as the need for training in such topics is identified by the job analysis referred to above. The key feature of the course will be the use of Indonesian fact patterns for discussion.*

Progress to date. The Basic Skills course began in the fourth quarter with a basic economics module taught by Indonesian economists from PPA Consultants. ELIPS has been asked by the KPPU to involve the same economists in teaching the basic industrial organization early in 2003. The Basic Skills course will be followed by the Professional Skills course toward the end of 2003. The Professional Skills course will focus on analysis of fact patterns. An ELIPS-sponsored legal English course began for an initial period of 12 weeks on October 15.

Activity 9. *Provide post-graduate training (LL.M. or other) for one or more KPPU staff members.*

Progress to date. Two KPPU lawyers have been selected to study for LL.M. degrees at American University, Washington, D.C., beginning in January 2003. American University was chosen by ELIPS for their study programs because of the easy access it offers to the Federal Trade Commission.

Activity 10. *ELIPS II will place a small number of commissioners and senior commission staff members in US-based training courses and internships with suitable US counterpart organizations.*

The KPPU has a small staff and only a small number of them, together with a small number of commissioners, are available and qualified to participate in overseas training. In the second quarter of 2002, Georgetown/PBC, with support from PEG, offered a study tour for two commissioners and two staff members. ELIPS is working to arrange an internship in mid-2003 for the Director of Communications and one of his staff in Washington D.C. to focus on the outreach and public relations activities of a governmental organization. In the 4th quarter of 2002, ELIPS supported participation of two KPPU commissioners in the Sedona Antitrust Workshop, and of the Executive Director in the International Competition Network Merger Investigation Workshop in Washington and, together with one commissioner, in a two day program at the FTC covering non-substantive (i.e., mostly administrative) functions such as the commission secretary, human resources, communications, general counsel, library.

Activity 11. *Indonesia needs an administrative procedure act (APC), or each of the proliferating regulatory commissions will have to develop their own procedures. ELIPS II will identify the constituency for an APC and how that constituency can be supported to develop and implement a plan for promoting discussion of common administrative procedures and standards for newly established regulatory commissions.*

ELIPS has continued to monitor discussion of draft legislation and regulations related to establishment of independent regulatory bodies (IRBs). The laws for money laundering, oil and gas, telecom and electricity all mandate establishment of IRBs. Draft laws and regulations also were being discussed for financial institution supervision and broadcasting that will provide for IRBs. The Financial Intelligence Unit, the IRB for money laundering, was discussed above. With respect to oil and gas, ELIPS has begun discussions with USAID's energy consultants who are advising the committee drafting regulations for the upstream and downstream oil and gas regulatory bodies (BALAK and BATUR) mandated by the Oil and Gas Law approved in November, 2001. The government regulations to establish the telecom commission required by the Telecom Act of 1999, and the electricity commission required by the electricity law approved in the third quarter of 2002, have been

issued. While these commissions are being established, ELIPS will work with them to encourage adoption of common procedural rules that could be the nucleus of a later administrative procedures act to be considered by the Parliament.

Activity 12. *ELIPS II will arrange at least one seminar or workshop on the role of Indonesia's regulatory commissions in the constitutional framework and on the administrative law needed to facilitate the work of the commissions including specification of issues regarding their relation to the courts (court deference to commission determinations of fact?).*

Any large-scale conference has been postponed until 2003. However, on a smaller-scale, ELIPS worked together with U.S. Embassy staff to organize a seminar on public ethics presented by a team from the Office of Prosecutorial Development, Assistance and Training (OPDAT) of the U.S. Justice Department. KPKPN was the host, but representatives of many law enforcement agencies attended. ELIPS has begun to provide assistance to the Supreme Court regarding the drafting of a regulation to cover court handling of appeals from decisions of the KPPU. ELIPS consultants held a series of meetings with the Supreme Court steering committee for the development of the regulation and with the KPPU commissioners and staff litigation team to discuss standards of review for administrative agency decisions.

Activity 13. *Develop implementing regulations and procedural manuals. ELIPS II has made arrangements for a team of short-term advisors to assist the Consumer Protection Commission early in calendar year 2002 to produce an operational manual.*

ELIPS consultants Ron Adams and Gerry Thain drafted an operations manual for the consumer dispute settlement bodies that have been established in seven pilot regencies/ mayoralities. Ron Adams also participated in a number of training seminars sponsored by the Ministry of Industry and Trade for persons who will be members of or work with the bodies.

Activity 14. *Develop a human resources management plan.*

The KPKPN, the only candidate for HRM support aside from the KPPU, does not appear to be interested in developing a human resources plan and therefore ELIPS will not be following-up on this activity. ELIPS consultant Sri Wahyu Sakti completed the job analysis/skills identification project for KPKPN staff during the third quarter. ELIPS then was asked to carry out similar research for the 33 commission members and their jobs at the commission. However, because of the likely absorption of the KPKPN by the new Anti-Corruption Commission, ELIPS has decided not to undertake this work.

Activity 15. *Support efforts of the KPKPN and other economic regulatory commissions to provide the public with information on their activities through development of websites.*

The KPKPN has a website but has not made it available to the public while it waits for a decision from the Supreme Court to confirm that it is legal to make information available on a website. Therefore, there has been no relevant support that ELIPS could offer for that website.

Activity 16. *Develop and deliver local training on legal issues and investigation techniques. Identify short-term training courses in the region or in the US that may be appropriate for commission experts and investigators who have exhausted the locally-available training resources or who have a special need for technical training. Such courses may be funded by US agencies other than USAID.*

The ELIPS Regulatory Advisor, after being evacuated to Washington DC, was able to identify possible sources of technical assistance in forensic accounting and other investigative techniques that could be made available to new regulatory commissions in Indonesia once the evacuation order is lifted.

INSTITUTIONAL STRENGTHENING OF LAW SCHOOLS

During the year, ELIPS advisors, working with Professor Charles Irish, began laying the foundations for the development of tax programs in Indonesian law schools. Professor John Head, working with Adijaya Yusuf from the law faculty at UI, completed updates of two important books on Economic Law. ELIPS worked with

the ABA and local organizations to sponsor an observation tour to the US for key individuals from the Indonesian legal profession. The focus of the observation tour was to study the methods of admission to the bar, with emphasis on the bar examination process and the reporting on moral fitness prior to admission. Finally, ELIPS, in cooperation with the PEG project and the Center for Strategic and International Studies, sponsored a major two-day public seminar on the economic costs of terrorism to Indonesia.

Activity 1. *ELIPS II will work through existing research programs to promote research on legal issues among both legal and other academics. Legal academics, working by themselves, cannot produce the needed work. Sociologists, economists, anthropologists and others need to be involved. ELIPS will ensure that scholars with empirical research skills apply those skills to legal policy issues. ELIPS II will encourage work on at least one multi-disciplinary research project.*

Progress to date. The project on Islamic Banking did not develop. However, the concept of an empirical research workshop was expanded because of the interest of leading junior faculty in Indonesia and of several leading experts in U.S. law schools and the American Bar Foundation. Due to security concerns, the planned workshop was rescheduled from January to April, 2003.

Activity 2. *ELIPS II will hold at least two series of economic law seminars and workshops for faculties at three or more law schools to upgrade teaching skills and substantive knowledge, at least two specially tailored economic law seminars designed for junior law faculty members, and at least one seminar on economic law and reforms for the media and NGOs.*

All of the projected training took place, except the seminar for the media and NGOs. The two series for upgrading of teaching skills and substantive knowledge were, respectively, three months (January to April) and five weeks (July-August) in duration. Both programs had approximately 35 participants, representing 12 universities and four governments departments: KPPU, Parliament, SEKKAB (the executive cabinet office), and Department of Justice. A team from University of San Francisco Law School taught the first course, and Prof. Paul Brietzke of Valparaiso University Law School covered the second training program.

Two specially tailored economic law seminars were held during the second quarter of 2002 at law schools (UNHAS and UNSRAT) with invited faculty, and another presentation was made for faculty from several law schools and lawyers participating in the e-Learning conference in June 2002. Adijaya Yusuf of UI and ELIPS consultant Prof. John Head led discussions that were focused on their two books, Course Topics and Curriculum in Economic Law (*Topik-topik Mata Kuliah Hukum Ekonomi Dan Kurikulum*) and A General Introduction to Economic Law (*Pengantar Umum Hukum Ekonomi*). The participants at the workshops were helpful in indicating the direction to be taken by new editions of both books. Faculty from both schools followed-up with suggestions before the end of the year. The new editions were projected for publication during the first quarter of 2003.

The plan for “at least one seminar” for the media and NGOs was deferred to 2003, and is expected to be a series based on the new editions of the books just mentioned.

Activity 3. *ELIPS II will conduct at least two series of continuing legal education seminars on economic law topics for practicing professionals, held under law schools auspices.*

Progress to date. The situation concerning assistance to the Capital Markets certificate course remained on hold, pending clarification of the University of South Carolina’s intentions/activities. Progress on developing the law schools’ capacity to offer CLE courses in tax continued. Discussions with UI, which regularly organizes Continuing Legal Education (CLE) courses in areas that can pay their way, indicate strong interest in receiving ELIPS assistance in developing long-distance learning packages (e.g., CD-Roms for core course, supplemented by email and teleconferencing). This will be pursued in 2003.

Activity 4. *ELIPS II will design and deliver at least one round of specialized training and seminars in ADR for law faculties, law students, practicing legal professionals and commercial court judges.*

Progress to date. There are currently no plans to hold this training, as there are a number of other donors working in this field. However, it is a possible subject for a long distance package (see Activity 3, immediately above).

Activity 5. *ELIPS II will hold at least one conference on a timely topic, tentatively on anti-corruption, financial crime, or counter terrorism.*

Progress to date. ELIPS and PEG co-sponsored a major conference on the economic impact of terrorism during the second quarter of 2002. ELIPS participants Koid Swee Lian, head of the Financial Intelligence Unit at the Central Bank of Malaysia, and Jerry Rowe, a retired IRS money laundering expert, made presentations on financing of terrorism and money laundering. The conference was attended by over 200 participants from academia, government and the private sector. During the third quarter, ELIPS sponsored a half-day seminar on the use of data in electronic form as evidence, in cooperation with the University of Indonesia, Padjadjaran University and the Department of Justice. As previously mentioned, this topic is crucial in the prosecution of financial crimes. The GOI acknowledged during the conference that neither the draft e-commerce law prepared by UI nor the UNPAD draft cyber-law were ready for consideration by the Parliament. The policy directives provided to the university drafting teams were not clear and the GOI plans to have inter-departmental meetings to clarify these policies before attempting to redraft a cyber-law. As discussed above (Assist the GOI in Economic Law, Activity 2), ELIPS also held a seminar on July 23 on the draft Investment Law, which focused on important issues being debated by the drafting team.

PROFESSIONAL ASSOCIATIONS

Activity 1. *ELIPS II will host a conference with Indonesian lawyers and representatives from US bar associations and the National Bar Admissions Council to discuss testing and ethics; this conference may use videoconferencing technology.*

Progress to date. The national legislature in 2002 did not enact the draft Advocates law, but expectations remained strong that its passage would come in 2003. The deteriorating security situation meant that the possibility of using videoconferencing technology for the conference on testing and ethics became mandatory, rather than optional, and will proceed early in 2003.

Activity 2. *On a continuing basis, ELIPS II will provide the bar associations with basic resource materials.*

Progress to date. ELIPS provided a wealth of information on the function of bar associations to the GOI and leaders of the major lawyers associations in 2001. ELIPS has continued to provide input as required.

Activity 3. *ELIPS II will organize and conduct a study tour to the US for officers of professional organizations to familiarize them with varying methods used in the US relevant to professional codes of ethics, admission to the Bar and discipline within it.*

Progress to date. In addition to providing written materials from US bar associations and disciplinary bodies, in the second quarter ELIPS cooperated with the American Bar Association in sponsoring two members of a seven person delegation who visited the U.S. to study the methods of admission to the bar, with emphasis on the bar examination process and the reporting on moral fitness prior to admission. ELIPS' participants were Mulya Lubis of Judicial Watch, Indonesia, and Ibrahim Assegaf of Hukumonline.com. A major focus of the tour was the visit to the National Bar Admissions Council, which is located in Madison, Wisconsin. The emphasis on admission standards for a professional bar and the visit to Madison were particular contributions of ELIPS to the jointly sponsored study tour.

Activity 4. *For those professional organizations that demonstrate both the interest and the will, ELIPS II will organize at least one capacity building seminar and provide model texts and illustrative materials to encourage collaboration between organizations on areas of mutual interest and concern.*

Progress to date. This activity is planned to begin in early 2003 in coordination with Activity 1.

OUTREACH ACTIVITIES

Activity 1. *Depending on progress in the opening of new commercial courts in the provinces, ELIPS II plans to work through local law schools to provide one or more intensive training workshops for the judges on relevant subjects, including the laws on competition, bankruptcy, and consumer rights, and on opinion writing.*

Progress to date. ELIPS will not be undertaking any commercial court training activities since the IMF has a project that is focusing on development and training for the commercial courts.

Activity 2. *ELIPS II will assist local law schools in preparing materials and providing at least one series of training seminars for local legislatures and civil society groups on drafting effective legislation, one series of seminars on obtaining public inputs to the legislative drafting process, and one training series for the media on legal and economic reporting.*

Progress to date. ELIPS advisors focused efforts during the first half of the year on the training of trainers through two training programs in Jakarta and a semester long program at Boston University. ELIPS' focus in the last half of the third quarter was on developing the skills of legislative drafting trainers from UI. In September, ELIPS sent two UI faculty members, including the head of the Legislative Drafting Program at UI, to a four-month Legislative Drafting Program at Boston University and plans to send two more in January 2003. ELIPS has also been working with those trainers still in Indonesia to give them experience in legislative drafting by employing them as advisors on drafting efforts that ELIPS is involved in, such as the Warehouse Receipts drafting exercise. The result is that there has been a great deal of demand for UI's drafting instructors. UI trainers taught legislative drafting to members of local legislatures in Aceh and West Java during the third quarter, and trainings with other local legislatures continued through the fourth quarter. Both trainings were paid for by the local governments themselves, with ELIPS support being limited to the provision of training materials.

HUMAN RESOURCES DEVELOPMENT

The three male LL.M. candidates whose visas were delayed as a result of new U.S. visa regulations finally received their visas in December and left Indonesia to begin their programs at American University in Washington D.C. during the reporting period. Their departure brings the total number of ELIPS-sponsored LL.M. candidates in the U.S. to 14. The first candidate, who started in Fall 2001, graduated at the end of 2002 and will be returning to Indonesia early next year.

During 2002, ELIPS delivered two distance learning courses for use in Masters Degree programs in Indonesia. ELIPS has also provided cooperating universities with full-text legal databases for the use of their graduate students. The databases, which use technology developed during ELIPS I, are supplied by a local legal publisher and include all laws and regulations from 1950 to the present as well as a custom bankruptcy database. As discussed above (Assist the GOI in Economic Law, Activity 16), ELIPS IT specialists have developed a plan for putting Indonesian Supreme Court decisions online and are implementing this activity in cooperation with The Asia Foundation.

During the fourth quarter, the first two ELIPS sponsored e-learning courses ended. These courses on Bankruptcy and Intellectual Property each had over 100 students participating. The ELIPS Education Advisor met with consultants and U.S. professors of the courses in the United States in late December to evaluate the materials developed for the two courses, including recorded lectures, and determine the feasibility of restructuring them for other courses or short professional development courses. ELIPS advisors also worked closely with the University of San Francisco (USF) to develop an e-learning course based on experience gained during the last semester entitled "Introduction to American Law." This introduction course is an e-learning version of a course commonly taught to foreign LL.M. students in their first semester at a U.S. law school. The course will be given to 35 students who are participating in an ELIPS-sponsored pre-LL.M. program (see previous section) and they will receive 2 units of credit for the course from USF upon successful completion of the course. ELIPS also made extensive use of videoconferencing during the quarter. The ordered evacuation made it impossible to bring consultants to Indonesia even though considerable work needed to be done on anti-money laundering regulation and anti-terrorism legislation. ELIPS was able to hold videoconferences between Indonesia and the United States so that Indonesian counterparts could meet with U.S. consultants. The use of videoconferencing linked with email has proved very successful in delivering consulting services during the evacuation.

Activity 1. *Select prepare and place up to 30 Indonesian junior faculty members and cooperating agency staff members as candidates in Masters of Law degree economic law programs in the United States.*

Progress to date. Of the 36 participants in the three-month, full-time training course in the first quarter, 33 successfully completed the course and took the official TOEFL exam; of those, 15 scored 550 or above. Although U.S. law schools characteristically want minimum scores of 600, the original ELIPS Project was successful in placing candidates with much lower scores, and the first candidate placed by ELIPS II (September 2001), who had a TOEFL of 570, also progressed well, and graduated in December. ELIPS II selected 12 of the 15 with TOEFL scores above 550 (five of them scored above 580, a substantial improvement on the original pool.)

All 12 candidates were accepted at the LL.M. programs at cooperating U.S. law schools (University of San Francisco, University of Washington (Seattle), University of Wisconsin, and American University.); ELIPS was successful in obtaining substantial tuition discounts for participants going to USF and the University of Wisconsin. In addition to these 12 candidates, ELIPS also agreed to provide partial support for a recipient of a Fulbright scholarship who will study Intellectual Property Law at John Marshall College of Law in Chicago.

During the third quarter, two participants began their programs at the University of San Francisco (USF); three at the University of Washington (Seattle); three at the University of Wisconsin; and one at John Marshall. The other three participants departed in December, to begin at American University in January. There are five women and eight men, from four law schools (UI, UGM, UNHAS, UBAYA) and two government departments (KPPU and the Cabinet Secretary). Earlier in the third quarter, the above candidates, along with an equal number who are on track to advanced training, completed a five-week preparatory course in Jakarta that included intensive English language training in the mornings and a pre-law course taught by a U.S. law professor in the afternoons/evenings. This program was designed to ease the entry of participants into U.S. LL.M programs, and to assist the progress of the next batch of LL.M candidates.

The tightening and changing of visa requirements and procedures in the U.S. due to increased security concerns resulted in the process taking months rather than days or weeks. Press reports indicated that some 2,500 Indonesians were “pending” in July and August, just prior to the opening of US Schools for the Fall semester, and many indeed lost the chance to begin their academic program. Although there were extended periods of suspense and considerable juggling of schedules, ELIPS was gratified (and thankful) to achieve the placements indicated above.

Activity 2. *ELIPS II has made some overtures, and will make more during Year One, to determine whether one or more US law schools can assist in addressing the requirement that full law school professors must have an Indonesian doctorate; one possibility is finding one or more universities willing to accept visiting scholars.*

Progress to date. ELIPS advisors were able to provide assistance to two Indonesian law professors who needed to do additional research in the U.S. to finish their Ph.D. dissertations. In both cases, ELIPS helped the scholars to gain access to U.S. law school research resources at no cost to the project.

Activity 3. *ELIPS II will work with US and Indonesian law schools to develop distance learning courses to be used in Master’s Degree programs, Continuing Legal Education programs and specialized legislative drafting programs for legislators and government officials.*

Progress to date. Two model courses that will be used as a proof of concept, advanced Bankruptcy and advanced Intellectual Property, began during the second week of September with over 100 students enrolled in each course. During the second quarter, ELIPS let a subcontract with a local ISP to provide both the communications infrastructure and develop the e-learning software suite. The software and infrastructure were in place in early September. During the first weeks of the courses there has been a lot of work involved in getting all the universities connected for the videoconference segments. One person at each university has dedicated almost 8 hours a week to videoconference coordination and it remains to be seen if this level of effort will continue after ELIPS funding ceases. There have also been problems with the internet software suite which are being corrected as the courses progress. ELIPS is planning to have the courses evaluated in January 2003 and to use the evaluation findings to improve both delivery methods and course content. Also during the third quarter, USF began work on a for-credit course entitled Introduction to American Law to be delivered over the ELIPS e-Learning infrastructure. The USF course will be offered to ELIPS pre-LL.M. students in 2003 and will count toward the LL.M. degree for those continuing their studies at USF.

ELIPS advisors have completed most of the scripts for the self-paced course on Evaluating Legislation for members of Parliament and government officials. Participants in the Boston University training program are working with ELIPS advisors to complete the scripts and exercises for the course. The course will then be recorded on CD-ROM and distributed to the DPR, interested local legislatures, and government offices.

Activity 4. *ELIPS II will initiate a legislative drafting course for the legislative drafting unit of the MOJ and a limited number of other drawn from the legal sections of other agencies.*

Progress to date. As discussed above (Assist the GOI in Economic Law, Activity 8), the fourth ELIPS-sponsored Legislative Drafting program took place in July 2002. During the third quarter, ELIPS sent five participants to the four-month Legislative Drafting training program at Boston University; the participants came from the University of Indonesia (2), the Department of Justice (1) and the Legislative Drafting Unit in the DPR Secretariat (2). The group includes Mrs. Sri Hariningsih, who up until June of this year was Indonesia's top legislative drafter at the Department of Justice and is now a guest lecturer at the University of Indonesia, and Mrs. Maria Farida Indrarti, head of the Legislative Drafting Program at the University of Indonesia.

Finally, in late July, ELIPS sponsored a one-day seminar to introduce the heads of legal bureaus from all government departments to legislative drafting methodology. The seminar was led by Professors Ann Seidman and Bob Seidman, who also direct the Boston University legislative drafting program.

ICT RESOURCES DEVELOPMENT

Activity 1. *ELIPS II will award a subcontract to an Indonesian firm to collect, translate, and disseminate legal materials (including court decisions) via the media and Internet early in Year One.*

Progress to date. It was decided that different groups would be engaged for translation and dissemination work. ELIPS continues to use its local translators who specialize in legal work. Dissemination will be done via the Supreme Court, private legal publishers and through the ELIPS web site.

Activity 2. *ELIPS II will determine the feasibility of providing access to proprietary US and Indonesian databases (e.g., Westlaw, Lexis and PHI).*

Progress to date. ELIPS has provided a custom Bankruptcy database, the State Gazette database and the Civil Code database to each of the universities participating in the e-Learning program. ELIPS will be evaluating the use of these databases by students in the courses to determine the value of providing the same databases to other Indonesian universities.

PARTNERSHIP FOR GOVERNANCE REFORM

Legal judicial reform remains one of the priority program areas of the Partnership for Governance Reform. The legal and judicial advisor arrived in Indonesia in August and on October 21st, she was evacuated from Indonesia under State Department orders resulting from the Bali bombings. From Washington, the Advisor's ability to provide support to the Partnership and the legal judicial reform team has been severely constrained. Nevertheless, the Advisor has:

Helped shape the Strategy and Work Plan for 2003 by providing written comments to drafts.

Meeting with members of the Indonesian Supreme Court who were in Washington on a study tour to discuss planning for a possible program with Partnership funding to support creation of a judicial code of ethics and disciplinary system. This work is ongoing and involves obtaining input from other donors.

Taking advantage of resources available in Washington to obtain relevant information and materials for use in Partnership legal reform programs.

Continuing to communicate with the donor working group on legal judicial reform and to plan for the CGI, which was rescheduled for January.

Working with the National Law Commission on an extension of its program and a new proposal for additional funding in 2003-04.