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# THE NUISANCE PERMIT SYSTEM

A REPORT ON DISTURBANCE CONTROL

**JULY 2008**

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# THE NUISANCE PERMIT SYSTEM

A REPORT ON DISTURBANCE CONTROL

**JULY 2008 – STTA DONALD L. ELLIOTT**

**DISCLAIMER**

THE AUTHOR'S VIEWS EXPRESSED IN THIS PUBLICATION DO NOT NECESSARILY REFLECT THE VIEWS OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OR THE UNITED STATES GOVERNMENT.

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**Consultant:**

Donald L. Elliott

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# BACKGROUND

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All modern economies need to address “disturbances” or “nuisances” of business ventures on the citizens and communities where they are located. This is necessary for several reasons. First, local governments exist largely to protect the health, safety, and general welfare of their citizens. When proposed business enterprises will have an adverse affect on the health, safety or general welfare, citizens expect their elected officials to address those issues. If they do not, then citizens will use their democratic electoral rights to replace them with new elected officials who will better protect their interests. Giving local governments the power to address disturbance and nuisances – and guiding them in the use of those powers – is one element in creating a stable and responsive democracy.

Second, a clear system of disturbance/nuisance protection helps promote stability and predictability for businesses themselves. Most business enterprises know that their operations create impacts outside their property boundaries – most commonly through increased traffic for supplies, employees, and products – but often in the form of noise, glare, vibrations, potential risks to public safety, or increased demands for utilities and services that are already in short supply. While some businesses may hope that these impacts can be ignored, most understand that local governments are obligated to address them and instead want a system where the local governments’ responses will be predictable. In order to make efficient business decisions, businesses need to know in detail whether they will be subject to a new regulation (or exempt from it), what types of business activities might be defined as a “disturbances” or “nuisances” that need to be remedied, what types of mitigation may be required, who is responsible for reviewing impacts, what fees will be charged (and on what basis) and how long it will take. In modernizing economies throughout the world, businesses increasingly accept that they will be responsible for their actions; they ask only that the rules be objective, known in advance, and applied even-handedly to them and to their competitors.

Indonesia has a long history of addressing nuisances and disturbances created by business activities. As early as 1926, the Dutch colonial government issued Nuisance Law in Staatsblad number 226 and then amended that law through Staatsblad for 1940, number 450. The original legislation was titled “Hinderordonnantie” and the permits it authorized were known as “H.O. Permits”. After independence, this system became known as “Undang Undang Gangguan”, or the Disturbance Law. Over 50 years later, long after Indonesia’s independence, the Minister of the Interior issued Regulation No. 7 of 1993 on Building Permits and Nuisance Permits for Industrial Companies that further amended the national approach to these issues.

Over time, the required permits have been referred to as both “Disturbance Permits” and “Nuisance Permits”, and both terms are found in the documents I reviewed. Since the background materials use both terms, I have used both in this paper; however, I believe the more accurate term is “disturbance permit”. In common law countries the term “nuisance” has a specific meaning and is not addressed through permits, licenses, or zones. The use of the term “Nuisance Permit” may tend to complicate legal comparisons with other systems of land use control, while the use of “Disturbance Permit” will reduce opportunities for confusion.

Despite the 1993 revisions, however, the legal basis of nuisance/disturbance control is quite dated. It relies on a permit-based approach that may have been appropriate when the national economy was much smaller and the government centralized. As they modernize, however, most countries move from a permit-based approach to a zoning approach that guides businesses into more appropriate locations and avoids the need for individualized review of the impacts of each business in each location. Indonesia has moved in that direction as well with Law 26 of 2007 on Spatial Planning, which calls for the introduction of a zoning system by 2010. In the interim, however, Indonesia’s dated approach to

nuisance/disturbance has been complicated by the move towards decentralization of government powers. This has resulted in hundreds of local governments gaining the authority to regulate and address business disturbances, but with little experience in doing so and significant temptations to use those powers much more broadly than they have in the past. One consequence of this change has been that investment has been slowed and Indonesia's national competitiveness in the global economy has been compromised. Other consequences are outlined in the pages that follow.

The answer is not to abandon disturbance control, or to roll back decentralization of government, but to reform the legal basis of nuisance/disturbance control so that excesses of the current system are removed and barriers to investment and economic growth are reduced. These reforms must take into account that they are interim measures designed to operate until Indonesia's zoning system is in place. The Nuisance Permit system does not have to be reinvented, but it must be circumscribed so that it operates efficiently and effectively – and reinforces the proper roles and responsibilities of local government – for the next several years.

# 1. COMMENTARY ON LOCAL IMPLEMENTATION OF H.O. REGULATIONS

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Decentralization of government authority is a global trend in modernizing economies, and one that is well worthy of support. In many countries, decentralization has resulted in a clarification of local powers, state/province/regency powers, and central government powers related to land use. While protection of the environment is often a central government authority, regulation of zoning, planning, nuisance, and land use is very often delegated to local governments. Over time, local governments gain experience in using these regulatory tools in ways that reflect the balance of community desires – usually a balance between the desire for community stability, the desire to promote economic growth, and the desire to generate government revenues to support enhanced services.

As local governments gain that experience, however, they sometimes tilt the balance of interests very far in one direction before the imbalance is corrected. In these early days of Indonesian decentralization and local administration of H.O. Permits, there is some evidence that local governments have leaned towards over-regulation of disturbances in an effort to either reduce the pace of economic change, or to generate tax revenues, or both. Evidence of these practices has come from conversations with the staff from SENADA and The Asia Foundation, as well as members of the Ministry Regulation drafting team. More specifically, it appears that local implementation of H.O. Permits has varied widely among local governments, but that some instances of each of the following have been noted:

- Local governments using the H.O. Permit requirement as a means to generate local tax revenue (*Pendapatan Asli Daerah*, PAD) through high user fees apparently unrelated to specific enterprise impacts or monitoring;
- Local governments using the H.O. Permit requirement as a way to confirm or enforce compliance with other business, industry, or location licensing requirements;
- Local governments using the H.O. Permit requirement as a way to revisit issues addressed in an AMDAL or UKL/UPL review or to implement the recommendations of AMDAL or UKL/UPL reviews;
- Local governments using the H.O. Permit requirement to extract “compensation” for the neighbors or the community unrelated to the anticipated impacts of the enterprise – for example, extracting a commitment to build a mosque or educational facility;
- Local governments requiring that applicants obtain written consent from all of the immediate neighbors as a substitute for local government evaluation of potential enterprise impacts (or requiring that enterprises use the services of a middleman to obtain those consents);
- Local governments deferring to the opinions of neighbors or citizens as to what constitutes a “disturbance” that must be mitigated (as opposed to using objective lists)
- Local governments requiring H.O. permits from a shopping mall, multi-tenant building, or industrial park developer, and then requiring a separate H.O. permits from each tenant in the facility.

Each of these practices can discourage enterprise formation and business investments in local governments and could be addressed by more specific guidance on H.O. administration from the ministry.

## 2. COMMENTARY ON THE CONSOLIDATED BACKGROUND PAPER

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In the United States, a background paper in support of a proposed policy directive is sometimes required and sometimes not. Since there is no general duty to prepare a background paper in support of proposed legislation, it is not surprising that there is no “standard” model for such a background paper. This section 2 will compare that background paper prepared in support of Ministerial Regulation on Procedures for Provision of Nuisance Permits with other policy “backgrounders” prepared used for various purposes in the U.S. It will focus primarily on substantive points made that might bear on the proposed Decree, and only secondarily on the structure and form of the document.

### 2.1. INTRODUCTION

#### 2.1.1. BACKGROUND

This section contains basic background information about the government’s role in regulation. The historical review of the Nuisance Law of Staatsblad (State Gazette) for 1926, number 226, Staatsblad for 1940, number 450, and Minister of the Interior Regulation No. 7 of 1993 on Building Permits and Nuisance Permits is good. Towards the end, this section mentions two facts that deserve more emphasis. First, the fact that the H.O. focus on dangerous/disruptive business activities has become integrated into standard business licensing; and second, the fact that local governments are using H.O. as a way to generate local revenue (PAD). The background paper should inform readers fully on these two points, as they relate directly to the need for a Ministerial Decree and to some of the weaknesses of the current draft decree.

#### 2.1.2. PURPOSE AND AIMS

The principal aim of the paper is “to strengthen the function of Nuisance Permits as an instrument for control of negative externalities that may arise from certain economic and social activities, and to perform simplification so that Nuisance Permits are not a burden on the business climate.” Given the goals of SENADA and the current use of H.O. in ways that discourage investment, it might be better to reverse those two clauses. For example, it might be more accurate to state that the aim is to “simplify the administration of Nuisance Permits so that they are not a burden on the business climate, while clarifying and strengthening the function of Nuisance Permits to control negative externalities from specific business activities.”

#### 2.1.3. SYSTEMATIC

The proposed structure of the paper (Introduction, Conceptual Study, Harmonization, Content / Material of the Regulation, and Conclusion) is logical. However, a similar memorandum in the U.S. might not include a separate chapter on Conceptual Study and might merge a shortened discussion on that topic with the Introduction. In addition, a similar background paper in the U.S. would almost always begin with an Executive Summary summarizing the content of the paper and key recommendations in one or two pages.

## 2.2. CONCEPTUAL STUDIES

### 2.2.1. PHILOSOPHICAL STUDIES

As noted above, most policy background papers for local and state governments in the U.S. do not have a separate section on philosophical studies. While the discussion the need for agreement on the definition of a nuisance is good, that could have been included in the Introduction section. Similarly, the discussions of business licensing and government permitting is useful, but could be emphasized more to support for one of the key problems with H.O. – that local governments have integrated it as a business licensing requirement rather than using it to address and avoid or mitigate specific business practices. Finally the discussion on integration of H.O. with the realities of decentralization is appropriate, but the concluding four bullets are rather vague and could perhaps be stated more succinctly.

### 2.2.2. JURIDICAL STUDIES

#### 2.2.2.1. Regulation of Nuisance Permits

Subsection 1.a states that the Netherlands colonial government introduced the Nuisance Law “with the aim of providing protection for the erection of small buildings as places of work and small businesses from *disturbance by the public*.” (Emphasis added). I believe this is a misstatement (or perhaps mistranslation). During my visit I heard one comment that the Nuisance Law had been introduced to protect Dutch-owned trading companies from objections from the public and from competition from indigenous companies. However, my own reading of the law suggests that it was imposed to protect the public from the adverse impacts of certain business practices, not to protect industry from the public. The desire to protect the public from the excesses of business (not vice-versa) would be consistent with the spirit of the 1920s and the municipal reform movement then taking place.

The third paragraph of subsection 1.a correctly mentions that one weakness of the Nuisance Law was that it allowed penalties for failing to get a permit, but not for misusing the permit or violating its conditions. However, the following sentence is out of place. It reads “Further, violations of the provisions of AMDAL or UKL/UPL are not explicitly stipulated as permit violations, although these are declared to be requirements for obtaining permits for businesses/activities.” Clearly a law drafted in 1924 and amended in 1940 could not cross-reference much more recent legislation. More importantly, however, it is not clear that the Nuisance Permit was ever intended to be used as an enforcement mechanism for unrelated legislation or that making violations of AMDAL or UKL/UPL automatic violations of the H.O. permit is a good idea. Just as integrating H.O. permits into a business licensing scheme tends to distort its original purpose, making it a tool for enforcement of environmental laws may have the same effect. The final conclusions about the Nuisance Law not containing timeframes, appeal mechanisms, or consequences for poor administration are all valid.

Subsection 1.b contains a typo in the heading, since the regulation under discussion is dated 1993 (not 2003). The text mentions two key facts that could be emphasized more. First, that the 1993 regulation did not adequately define nuisances; and second, that it did not specify what types of businesses were required to have H.O. permits. These two weaknesses go to the heart of decentralized administration of the H.O. permit – that it has expanded to become a regulatory requirement applicable to a much broader range of companies and activities than was intended by the 1924 and 1940 acts. Regulations that do not clearly define who is subject to the law and who is not are particularly damaging to business climate, because (as a practical matter) all investors have to assume that they might be subject to the regulation and plan accordingly. In some cases that uncertainty and potential added expense may lead an investor to abandon his or her plans, even when their specific business might not have created

significant disturbance. Regulations intending to balance business promotion goals with protection of public health, safety, and welfare are always going to find tensions between those conflicting goals, but one of the most effective and efficient ways to resolve them is to clearly state what types of businesses (or activities) are required to comply with the act.

Subsection 1.b also repeats earlier discussion of the poor integration and coordination of Nuisance Permits with AMDAL/RKL/RPL and UKL/UPL. Again, the text seems to assume that integration means that Nuisance Permits serve as the enforcement mechanism for the environmental study requirements, when it is not clear that is necessary or that it would promote healthy investment initiatives.

Subsection 4 discusses Law 5 of 1984 on Industry, which requires that each industrial company obtain an Industrial Business Permit (*Izin Usaha Industri*, IUI). While the text explains clearly that the IUI actually comes into effect after the business operation is constructed (i.e. they are more in the nature of “operating standards” than “permitting standards” it would be good to have a little longer and clearer discussion about the exact relationship between AMDAL/UKL/UPL reviews, H.O. permit requirements, and IUI permit requirements. More specifically, it would be good to know exactly what types of activities or impacts are covered by IUI, because some of those reviews might be taken out of the H.O. process (in order to avoid having investors provide the same assurances twice).

Subsection 6 discusses three pieces of regulation related to user fees: Law No. 34 of 2000 on Local Taxes and Local Government User Fees and PP No. 65 of 2001 and PP No. 66 of 2001. The text states that: “The Law also stresses that in article 21 letter c, as confirmed in PP 66 of 2001, for User Fees for Certain Licenses, the user fees shall be set based on the aim of covering part or all of the administrative costs of issuing the permit concerned. This is a key legal fact for clarifying and streamlining the H.O. process, because it appears that some local governments are in fact setting user fees to cover more than administrative costs. While it is often difficult to calculate administrative costs (see Attachment 2), it is much easier than trying to calculate community compensation for various disturbances. If this discussion can be expanded, or if there are examples of the interpretation or enforcement of these three pieces of law (particularly PP 66 of 2001, it would be good to include those in the background paper.

Subsection 8 analyzes Minister of the Interior Regulation number 24 of 2006 on Guidelines for the Operation of Integrated One-Stop Services, which establishes a general 14 day response time for governmental permits and a 10 day response time for complaints. While those timelines are admirable, they are probably only achievable on a regular basis if the number of firms subject to H.O. permitting requirements is limited (as it was in the original Nuisance Law through reference to specific practices) or if the scope of the H.O. analysis is limited. This fact might be mentioned in the background paper (perhaps in the Harmonization section). In other words, if regulation 24 of 2006 actually applies to the issuance of H.O. permit, the need for a 14 day permit issuance deadline should influence the depth and breadth of topics to be covered in the H.O. process.

In general, the Juridical Studies portion of the paper is thorough, and the summary table at the end of the paper appears to be completed. However, the section could be stronger if there were a narrative summary identifying what specifically should be addressed by the Ministerial Decree in order to address the obsolete portions of the Nuisance Law and Ministerial Regulation 7 of 1993 while fitting in with the eight other laws and regulations and regulations discussed. For example, the summary might address some of the key points discussed above – including the need to define exactly what types of activities were covered by the H.O. requirement, what types of business enterprises do not have to obtain H.O., how user fees may be calculated, etc. In other words, having identified the weaknesses and constraints in existing law, the section could conclude with a positive statement of how to address those issues.

### 2.2.2.2. Harmonization of Regulations Relating to Nuisance Permits

While subsection B.2 is well organized, parts of it are very repetitive of subsection B.1 – i.e., the same issues are discussed for the same laws. For example, the paragraphs summarizing key parts of each law (such as the fact that the list of activities in the Nuisance Law is not exclusive, and that the 1993 regulations excludes firms in Industrial Zones, and that H.O. and AMDAL/UKL/UPL are not well integrated) – were all adequately covered in subsection B.1. This may have occurred because different sections of the background paper were written separately and then assembled. The paper might be shorter and more focused if some of the repetition could be eliminated and subsection B.2 could focus on discussion of how to harmonize, rather than what to harmonize. A partial list of topics where specific recommendations for harmonization are needed include the following:

- Instead of re-discussing the lack of timeframes, simply mention that Regulation 24 of 2006 provides those timeframes and needs to be referenced in the Ministerial Decree. If there are timeframes not covered by Regulation 24 (for example, timeframes for appeals if the local government fails to act), identify specifically what those timeframes should be.
- Instead of re-stating that Nuisance Law does not impose penalties for violation of permit conditions (just for not having a permit), simply state that the definition of violation needs to be expanded to include violation of conditions – either through the Ministerial Regulation or through some other legislation.
- Instead of discussing the various bodies in which regulations allocate authority over Nuisance Permits, or the different departments that local governments use for that purpose, it might be good to simply recommend the administration body. In light of Regulation 24 of 2006 and PP 41 of 2007, it might be good to simply recommend that harmonization occur by clearly requiring administration of Nuisance Permits through the One-Stop Shops.

If this type of specific recommendation is intended to be covered in Chapter III (Policy and Direction of Regulation) then perhaps subsections B.1 and B.2 could be merged to avoid repetition. One of the key areas where harmonization is most needed is in the relationship between H.O. and AMDAL/UKL/UPL. As mentioned above, the paper seems to assume that integration means that the findings of the environmental reviews must be mentioned as conditions of the H.O. or that H.O. should be the enforcement arm for environmental studies. That is not necessarily true, and the paper might discuss other harmonization options. For example, during my visit to Indonesia I was told that the recommendations from AMDAL/UKL/UPL were generally included as conditions on industry licensing permits. If so, then they do not have to be part of the H.O. process.

A clear decision of which types of permits should be used to implement the findings and recommendations of environmental reviews would be very helpful. In general, if they are included in conditions on one type of permit (so that violation of the environmental recommendations becomes a violation of that permit) then they should not be included as conditions on a second or third type of required permit or license. It appears that in some cases local governments are requiring that each permit act as a “checkpoint” to ensure that all other licenses and permits and conditions have been performed, rather than focusing on the substance of that permit. During our meeting with local officials in Solo, it also appeared that local officials sometimes like to “cross-default” the various permits – so that a violation of any permit becomes grounds to suspend or revoke all permits. That approach quickly leads to a very cumbersome regulatory system that discourages investment. One key goal of harmonization should be to ensure that the various permit requirements are not overlapping, so that the H.O. process can focus on the nature of potential disturbances and how to mitigate them – rather than focusing on compliance with other (unrelated) business licenses and permits.

A first step in this effort would be to identify which type of permit should be the tool to require enforcement of environmental conditions, and the remove references to AMDAL/UKL/UPL from enforcement provisions of other permits and licenses.

### **2.2.3. SOCIOLOGICAL STUDY**

This section of the paper is short and well-organized. The key statement in this section is that “with regard to Nuisance Permits, their primary aim of controlling the impact of business activities is often altered into an administrative requirement for formalization of business activities and as a source for local governments to obtain Locally Generated Revenue.” This is indeed one of the primary ways in which the sociology of local government has distorted the original intent of the Nuisance Permit system, and the paper does a good job of discussing it. It is not clear why the table of permits by Regency appears in this part of the report, however, since that is basic background information unrelated to sociological analysis.

The 10 bullet point topics that follow the table are particularly strong. The first bullet is particularly important. It reads “Lack of clarity regarding the objects (types of business) that could potentially create Nuisances causes local ordinances to apply Nuisance Permits on all types of business.” This discussion needs to be expanded. As we discussed during my visit to Indonesia, I think there are two separate issues that need to be clearly addressed. The first is what types of business operations need to apply for an H.O., and which are exempt. The second is what types of disturbances are covered by H.O. This second topic is appropriate for discussion as part of the sociological study, because there is a natural temptation for local governments to broaden the definition of “disturbance” to address anything their citizens want to see addressed.

Many citizens are opposed to changes in their neighborhood, or increased competition in areas where they work, or other types of change that should not be defined as “disturbances” under H.O. because their impacts are subjective and immeasurable. It is important for local governments to focus their administration of H.O. (and other permits) so that they are based on measurable impacts and objective standards as much as possible, so that both citizens and businesses know the scope of the H.O. inquiry and disturbances can be minimized or avoided.

A related issue is that it appears that some local governments are using the H.O. process to obtain “compensation” for subjective impacts (for example, by requiring the construction of a mosque or educational facility as the price of consent to a business investment). This misunderstanding – that the H.O. is a way to obtain payment or benefits to offset general unhappiness with the proposed business enterprise – is properly addressed under the heading of sociological factors, and does not appear to have been addressed so far.

Bullet 10 may also deserve a little more discussion. Reading bullets 7 and 10 together, it appears that local governments are under-performing their duty to notify the public and substituting a duty to obtain consent from immediate neighbors. This results in a de-facto delegation of local government authority to the immediate neighbors, whose interests are often very different from the surrounding areas or the city as a whole. In the U.S. and Canadian systems, this is prohibited because it has been identified as a key way in which unacceptable bias and unfairness enters permitting procedures. The key sociological factors is that local governments often want to avoid decision-making on hard topics where the citywide interest and neighborhood interests conflict, but that is one of the key functions of local government. At the same time, immediate neighbors often feel that they should have a veto over changes they do not like or be entitled to compensation if those changes occur, both of which tend to erode local government authority and discourage investment.

#### **2.2.4. ECONOMIC STUDY**

This section of the background paper is strong, and the table on Priority Sequence of Ordinances (Perda) is particularly helpful. The discussion is at the macro level, however. If there are any available data on the average user fees charged or community benefits extracted that would make the paper stronger. While it is no doubt true that high user fees discourage investments, more details about the fees actually being charged would help illustrate the problem. Perhaps that data could be obtained by a quick review of the Perda that have already been reviewed by the Ministry (or those that have been invalidated by the Ministry).

While this section correctly focuses on the need for permitting to focus on market externalities, it might be good to state that the primary role of permitting should be to reduce or eliminate those externalities. A good regulation should send clear messages to investors about what types of externalities need to be avoided, so that investors can choose locations and technologies that avoid them. In addition, the conditions attached to a permit should themselves help reduce externalities rather than compensate the public for them. If the impacts are on traffic, the permit should require management or reduction of traffic. If the impact is noise or late night activities, the permit can restrict those. In order to have the least impact on economic activity, the regulation should make clear that the public is being consulted in order to identify impacts that can they be addressed through conditions addressing those impacts – not to identify compensation that would make the neighbors willing to live with those impacts.

### **2.3. POLICIES AND DIRECTION OF REGULATION**

#### **2.3.1. REGULATORY POLICIES**

This section is generally clear and concise. However, the first numbered point should be refined. In the draft document, it reads: “The government needs to consider abolishing nuisance permits, since in substantive terms, the purposes of nuisance permits are in principle accommodated through the licensing related to zoning and the environment.” As a long-term goal, it is probably true that Nuisance Permits should be abolished – particularly when spatial planning and zoning have been implemented. However, zoning is not a form of licensing, but a form of regulation that avoids the need for licensing individual businesses. Similarly, the environmental regulations in AMDAL/UKL/UPL are not a form of licensing, but a requirement to perform certain analyses. A more accurate statement might be that the government should consider abolishing Nuisance Permits in local governments where zoning and environmental regulations have been implemented. Until zoning and environmental regulations are in place, the abolition of Nuisance Permits would leave local citizens with little protection against disturbances that are not covered by AMDAL/UKL/UPL.

Similarly, the second bulleted point should probably be phrased as a policy to be used in the interim before zoning and environmental regulation are in place – rather than a policy to be used if repeal of Nuisance Permits is impossible. While the substance of the second and third bulleted points are accurate (avoiding forms of disturbance already addressed by other regulatory systems, and ending the use of Nuisance Permits as a form of local revenue generation), they do not cover all the shortcomings identified in Chapters 1 and 2 of the paper. Other topics that should be addressed include (1) failure to define what types of firms are required to apply for H.O. permits, (2) failure to define what types of disturbance can be addressed through H.O. permits, (3) local government delegation of Nuisance Permit decisions to immediate neighbors, (4) failure to specify timeframes for decisions and consequences of failure to make timely decisions. Since this section sets the stage for the Ministerial Regulation it is important that it recognize the key points raised in earlier sections.

### **2.3.2. DIRECTION OF REGULATION**

Subsection B is clear, but should be reviewed to ensure that it the short-term policy guidance in subsection B.2 covers the same topics as are covered in the Policy section above (as revised). First bullet point a should be expanded (or a new subsection drafted) to clarify that conditions attached to a Nuisance Permit should be limited to those that address and reduce the impacts of the disturbance to an acceptable level, and should not include those that attempt to compensate the neighbors or others for the disturbance in some unrelated way. None of the bulleted goals address the need to reform the public involvement process and avoid delegations to immediate neighbors, and some reference to that issue should be added.

### **2.4. ESSENTIAL CONTENT OF DRAFT MINISTER OF THE INTERIOR REGULATION ON PROCEDURES FOR ISSUING NUISANCE CONTROL PERMITS**

The initial discussion of philosophical, social, and juridical foundations appears very general, and might be better merged into the discussion of these issues in Chapter II. The bullet points under juridical foundations do not seem to match those in earlier lists of juridical considerations, and that inconsistency might be avoided by merging these statements into the earlier discussion. If a specific list of juridical considerations needs to appear in Chapter IV, it should match the earlier lists. The flow of the background paper appears to be from general to specific, and as the most specific guidance in the document, it seems like Chapter IV should avoid general discussion of concepts to focus on more detailed guidance.

Most of the remainder of Chapter IV concerns the Indonesian format for drafting Ministerial Regulations. Since the accepted format for legal drafting varies significantly from country to country, I do not have specific comments on these sections. In order to avoid repetition, my substantive comments on the text of the regulation are presented in Section 3 below.

### 3. COMMENDATIONS FOR THE JOINT MINISTERIAL REGULATION

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I have reviewed the draft Ministerial Regulation dated May 24, 2008 (the “Regulation”) and have the following comments. The draft I reviewed had 29 Articles and contained some misnumbering of Chapters, Parts, and Articles. I believe there may be a later draft that has 35 Articles and corrects those errors. Some of the comments below were mentioned my PowerPoint presentation to the drafting team, SENADA staff, The Asia Foundation staff, and others on June 13, 2008.

In completing this review, I assumed that one major goal of the Regulation is to reduce avoidable delays and costs to potential investment projects due to local government H.O. requirements. A second goal is to promote the Indonesian decentralization process (“reformasi”) by encouraging local governments to develop the skills required of modern local governments. With those goals in mind, the Regulation needs to be reviewed with an eye to:

- Reducing uncertainty as to types of businesses covered.
- Reducing uncertainty as to types of disturbances reviewed.
- Avoiding inappropriate delegation of H.O. authority from local governments to neighboring citizens.
- Reducing the need for renegotiation of H.O. terms at the time of permit extension if the investment project has not changed its operations.
- Avoiding inappropriate user charges and exactions

#### 3.1. GENERAL PROVISIONS

##### 3.1.1. FIRST PART: DEFINITIONS — ARTICLE 1

Based on discussions with staff, the definition of AMDAL may need to include social as well as environmental impacts. If it does not cover social impacts, then the comments on Chapter II below need to be revised to reflect that the H.O. review will need to cover the specific social impacts we discussed (since AMDAL does not cover them).

##### 3.1.2. SECOND PART: PURPOSE AND OBJECTIVES — ARTICLE 3

As we discussed during my visit, there seems to be agreement that topics covered under a required AMDAL or UPL/UKL review should not be covered again and should not be the subject of additional conditions or ‘retribusi’ through the H.O. process. However, there seems to be some confusion about what, exactly, is covered by an AMDAL or UPL/UKL review. The list of environmental topics covered by AMDAL seems clear, and the word “social” also appears, but it is not clear whether all social impacts are considered in the AMDAL process or only those social impacts related to the specific environmental impacts. Similarly, it was unclear whether the AMDAL review would cover economic impacts related to the reviewed environmental impacts (for example, water pollution that reduces the number of fish in the river available for others to catch). While it is clear that the UPL/UKL review is narrower and more targeted than AMDAL, it is still not clear whether related social and economic impacts are covered. In each case, if the AMDAL or UPL/UKL review covers the topic, it should not be reconsidered in the H.O. process – but if AMDAL/UPL/UKL do not cover them then the H.O. process should do so. To address this issue, I suggest that the wording of item c be changed to read: “*c. Protecting the environment in cases where the application is not subject to review under AMDAL, UKL/UPL, or other environmental review laws.*”

## **3.2. TYPES OF NUISANCE**

### **3.2.1. ARTICLE 6 (NOTE THAT IN MY DRAFT THERE WAS NO ARTICLE 5)**

This is one of four articles where I believe clarifications to the draft Regulation are most necessary. In order to promote investment in Indonesia, it is very important to define what types of change are not considered disturbances and are not subject to objection from the community. When the H.O. permit was introduced in the 1920s, it was very clear that enterprises did not have to obtain an H.O. permit unless they engaged in a specific list of activities or created specific impacts. Over the years, however, it appears that the scope of H.O. has expanded to where almost any enterprise needs to obtain a permit and negotiate about the terms and cost of that permit. It is important that the Regulation guide local governments back towards the original approach, which includes a fairly clear line between impacts that are “disturbances” that need to be addressed in the H.O. and impacts that are not defined as “disturbances” and do not need to be addressed.

This section should limit the list of “disturbances” to those that can be objectively verified and measured, and for which the local government can attach conditions to limit the disturbance. The question of what constitutes a “disturbance” should not be subjective or based on emotional or personal responses, but need to be defined objectively so that investors can try to avoid them (which is the ultimate goal of the H.O. permit). For example, an investor who is aware that potential public safety hazards will be addressed through the H.O. process is more likely to choose production approaches and technology that reduce risks to public safety.

In the present draft of the regulation, the language addressing “types of disturbance” is very broad. Although I believe the drafting team’s intent was to narrow this language through the use of an attached table, it would also be helpful to narrow the language of Article 6. I suggest that the language be revised as follows. Section (2) currently reads: “Disturbances to the physical environment as mentioned in paragraph (1) letter a include: soil, ground water, rivers, seas, air, and noise.” This section should clarify that disturbance to the physical environment exclude those that are addressed through AMDAL or UPL/UKL. This could be done through revised language like: “Disturbance to the physical environment as mentioned in paragraph (1) letter a include damages to soil, groundwater, rivers, seas, air, and noise, for those projects that are not subject to review under AMDAL or UKL/UPL.”

Section (3) currently reads: “Disturbances to community social life as mentioned in paragraph (1) letter b include the occurrence of: social unrest, moral decadence, threats to public order.” I suggest that this section be revised to read: “Disturbances to community social life as mentioned in paragraph (1) letter b include threats to public safety or moral decadence.” This wording excludes the category of “social unrest” since almost any change can be portrayed as causing social unrest. Almost all investment changes something about the community, and residents are often concerned about the proposed change, but generalized concern about the change should not be listed as a “disturbance” to be addressed through H.O. If the social unrest can be attributed to some specific impact on the community (for example, traffic or noise) that specific impact should be included as one of the listed environmental, social, or economic impacts. If it cannot be narrowed to a specific impact, it should not be a “disturbance”.

Section (4) currently reads: “Disturbances to the economy as mentioned in paragraph (1) letter c include reductions in: production; earnings; profits; and/or damage to all or part of public assets. Defining “disturbances” to include economic impacts is particularly risky, since many new investment projects will affect current suppliers, producers, or competitors. The fact that new investment will use efficient technologies that may take businesses from less efficient competitors should not be a factor considered in the H.O. process. After discussion with the drafting team, it appeared that the way to keep issues of

competitiveness out of this consideration was to limit it to potential impacts on public assets that the community uses. For example, if the proposed enterprise will result in overcrowding of a road so that current residents cannot ship their goods efficiently on the same roads, then the enterprise might be required to widen that road so that adequate traffic capacity for others is maintained. I recommend that section (4) be revised with language similar to the following: “Disturbances to the economy as mentioned in paragraph (1) letter c include damages to public assets (such as roads) that reduce production for others in the community, but do not include damages from increased competition.”

Section (5) currently reads: “Disturbance of community psychology as mentioned in paragraph (1) letter d is lack of comfort in living and in doing business that produce changes in the public’s mentality.” This language is so broad that almost any proposed change could be defined as a “disturbance”, which is very far from the original intent of the H.O. permit procedure. As with the discussion of “social unrest” above, this language is so broad as to be unworkable. I recommend that the subsection be deleted.

It is important to note that most of the types of “disturbance” listed in this section could be addressed through good zoning regulations. Those regulations would specify where in each community different types of activity are permitted (or permitted subject to objective conditions to protect their neighbors), and investors who locate their enterprises in the appropriate zones would not be causing disturbances. Put another way, their operations might cause disturbances in another location, but by locating in an area designated for that type of activity they can expect that neighboring properties will expect those impacts, so they are not treated as “disturbances.” The Regulation might want to clarify that once a local government has adopted a spatial plan and zoning regulations, the local government should no longer operate an H.O. permit procedure.

### **3.3. PERMIT REQUIREMENTS**

#### **3.3.1. ARTICLE 8**

I have no comments on this article, except to note that it is good to include a specific administrative remedy for the local government’s failure to complete the H.O. process within a defined time. As I understand it, Indonesian law includes general administrative law provisions allowing for appeals of local government decisions. However, the local government’s failure to act is sometimes interpreted as something other than a decision (i.e. a failure to decide) and therefore not appealable. This article simply clarifies that failure to decide within a specific timeframe is itself an appealable act.

#### **3.3.2. ARTICLE 9**

This article provides a standard 5 year term for H.O. permits and addresses renewals of the permits. Investors need assurance that they will not be obligated to renegotiate claims of “disturbance” in the future if their operations do not change. On the other hand, they should expect that if their operations change (for example, they generate more traffic, or operate longer into the night, or begin to use technology that allows more pollution) they will need to revisit the “disturbance” issue. The key question is “who caused the change”. Enterprises should be responsible for changes in “disturbance” that they caused, but not for changes in the neighborhood surrounding their property. This is important because once an enterprise has made a decision to locate on a particular property they are at a significant disadvantage in negotiating with the local government; stopping operations or relocating the business will seriously disrupt the business.

When faced with the need to negotiate terms for “disturbance” five or ten years later, there is a significant risk that they will agree additional conditions (whether or not they are justified) just to avoid disruptions and keep the enterprise running smoothly. It is therefore important to limit future

discussions about “disturbances” to those circumstances that the enterprise itself can control or mitigate. The Regulation already contains a provision (Article 17) addressing how H.O. permits are amended if business operations change, and there is no need for a second procedure attached to the five year renewal. Article 9 currently reads: “A nuisance permit shall be valid for five years and must be extended as long as the business activity continues to operate.” suggest the addition of language similar to the following: “Changes to the scope of business operations shall be addressed through the amendment process in Article 17, and not through the permit extension process. Changes to the surrounding neighborhood do not require an amendment to the disturbance permit.”

It is important to note, however, that this approach requires the local government to be diligent in monitoring enterprises for changed operations. It allows local governments to start a discussion about changed disturbances at any time (not just every five years). Generally, that is not a problem – truly changed circumstances (such as increased traffic or noise) are noticed by the neighbors, who can bring them to the attention of the local government. This approach does not allow local governments to avoid monitoring, however, and then put the burden on enterprises to come in every five years and prove that there have been no changes in operation.

### **3.4. LICENSE ADMINISTRATION**

#### **3.4.1. FIRST PART: OBLIGATIONS OF PERMIT ISSUERS — ARTICLE 14: (NOTE THAT IN MY DRAFT THERE WERE NO ARTICLES 11, 12 OR 13)**

Two fundamental principles of modern local government systems are that (1) the government must state (in advance, and objectively) the standards or criteria that an enterprise must meet to obtain permission to build and operate the enterprise, and (2) that government decisions actually be made based on those standards and criteria, and not on other considerations (for example, emotions, corruption, or general community opposition based on factors that are not listed in the regulations).

To meet those goals, it might be useful clarify in this Article that the permit issuer must make decision based solely on whether the application creates one or more of the specific types of disturbance listed in Article 6 and whether the application can be subject to conditions to mitigate those impacts. As an alternative wording, the Regulation could state that the permit issuer may not deny a permit based on objections that are unrelated to the specific types of disturbance listed in Article 6. As an example, a new section (2)(f) could be added to read:

*“(2) (f) make a decision on the H.O. application based solely on whether it creates one or more of the specific types of disturbance listed in Article 6 and whether those disturbances have been mitigated to an acceptable level. The permit issuer may not make a decision to deny or condition an application based objections or claims of disturbance that are not listed in Article 6.”*

#### **3.4.2. SECOND PART: OBLIGATIONS OF PERMIT APPLICANTS — ARTICLE 15**

As noted above, it is important that enterprises only be subject to permit amendments when the have changed their operations or facilities in a way that creates additional or changed “disturbances.” While good business/government relations require that the local government not try to impose additional conditions when business operations have not changed, they also require that the business be forthright about changes that may create additional disturbances. This article could be revised to clarify this responsibility by adding a section (e) reading “notify the local government of changes in enterprise scale, timing, facilities, or processes used that may create changed or additional disturbances as defined in Article 6.”

### 3.4.3. THIRD PART: BUSINESSES THAT DO NOT REQUIRE PERMIT — ARTICLE 16

This is the second (of four) Articles where I think the clarifications to the Regulations are most important. In connection with Article 6, I discussed the importance of limiting the types of disturbances covered by the H.O. permit system. This Article 16 needs to be equally clear about what types of applications or operations are exempt from the H.O. permit requirement for the same reason. Investors need to know in advance the rules of the game – and if certain types of activities or businesses will be exempt from a government regulation they are more likely to tailor their activities to gain that exemption. While clarification of Article 6 will give enterprises an incentive to avoid specific types of disturbance, clarification to Article 16 will give them an incentive to locate in places where regulatory burdens will be minimized.

Article 16 currently reads as follows: “All business activities are required to obtain nuisance permits, except: (a) Companies that already have AMDAL, (b) those located in Industrial Zones, Bonded Zones, and Special Economic Zones, (c) those in a building that already has an AMDAL and/or nuisance permit, and (d) small businesses that do not create disturbances.” While subsection (a) addresses enterprises and operations large enough to require an AMDAL review, it does not address smaller enterprises subject to UPL/UKL requirements. To cover that gap, a new subsection (e) could be added to read something like the following: “e. Companies that already have received UKL/UPL, which shall be exempt from review of disturbance to the physical environment under Article 6, paragraph 2, but not from review under paragraphs 3 (community impacts) and 4 (economic impacts).”

Subsection (c) addresses a common problem with the current H.O. system – requiring an H.O. for an individual building (for example a shopping mall) and then an additional H.O. permit from each tenant in that building. While it is possible that the individual tenants might create disturbances different in kind than those anticipated when the H.O. for the building was issued, that is unlikely. Instead, the double H.O. requirement creates opportunities for abuse by, in effect, requiring tenants to prove that they do not create any additional disturbances. The draft language exempting those in buildings with an H.O. from a second H.O. requirement is therefore a good change. If local governments are concerned about later disturbances from individual tenants, they can condition the building H.O. to avoid them.

Discussions with the drafting team raised a second, similar problem related to business parks. The question is, if an individual business park developer has obtained an H.O. for the entire park, should the buyers or renters of individual business plots be required to get a second H.O. for their individual operations. This is a slightly more difficult question, since the chances that a particular freestanding industrial or commercial enterprise will create unanticipated “disturbances” is higher than the chance that individual tenants in a single building will do so. If the goal is to promote investment and to ensure that “disturbances” are addressed efficiently, the I believe we should allow a business park/industrial developer the chance to either (a) obtain an H.O. based only on the construction of the park, and to leave with each business park tenant or buyer the responsibility to get their own H.O., or (b) to obtain a single H.O. covering all of the park and its tenants.

Obviously, if the future tenants and users are not known, the local government will need to be more cautious in approving the H.O. and crafting conditions to address unanticipated impacts, but they can do that. Just as for single building shopping centers or business centers, if they are worried about traffic they can attach conditions limiting overall traffic, etc., and then the business park owner will be responsible for making sure his tenants do not violate that limit. Some park developers will choose option (a) and some will choose option (b), but I do not believe the local governments should force them all to use option (a) and impose a dual H.O. requirement on them. To cover this situation, section (c) could be revised with language like the following: “Those in a building or a business park that already has an AMDAL or a disturbance permit covering activities within the building or business park.”

Section (d) is an attempt to exempt small businesses with minor impacts from the scope of the H.O. requirement, but I believe the wording will cause trouble. More specifically, exempting “small businesses that do not create disturbances” is an invitation for local governments and small enterprises to argue about whether or not they create disturbances. I understand that recent Indonesia defined “micro-businesses” (distinct from “small businesses” as defined in Article 2), and that term could be used to help define the exemption. This is a tricky area, because even very small businesses and businesses conducted entirely indoors could have impacts on their neighbors, while some larger and outdoor businesses might have few impacts.

In general, however, it is wise for local governments to focus their attention (and staff, and budget) on issues with larger impacts, and the trend is to not regulate many types of “home occupations” (businesses conducted in the owner’s own home) and some type of small development. The rationale is that including smaller businesses and impacts requires expensive local government staffing to monitor them and gets the local government involved in what are essentially “neighbor-versus-neighbor” disputes. The better and more efficient approach is to focus local government regulations on enterprises and impacts big enough that they will create impacts beyond their immediate neighbors. With that in mind, subsection (d) could be revised to exempt: “Small and micro businesses and home occupations that do not conduct operations outside of a closed structure.”

**3.4.4. FOURTH PART: AMENDMENTS TO NUISANCE PERMITS — ARTICLE 17**

As noted earlier, I think that the amendment process is the correct way to address changes in business operations that do or could change the kind or amount of “disturbance” experienced by the surrounding area. At present, this Article reads: “A business activity is required to apply for an amendment to its nuisance permit if it: (a) increases its business capacity by at least 10 percent compared to its previous production capacity, or (b) expands the land and buildings of the place of business.” There are some minor expansions to buildings (for example, the addition of a storage room or public entrance) that are unlikely to create additional disturbances, and those should be exempted. In addition, changes in the legal structure or form of the applicant (for example, changing from a private limited company to a public company) should not require the filing of an amendment to the H.O. Permit. On the other hand, there are some types of changes in business activities that are not listed that could create big changes in the types of “disturbance” listed in Article 6.

To address both the under- and over-inclusiveness of the current language, I suggest that Article 17 be redrafted with language similar to the following: “A business activity is required to apply for an amendment to its nuisance permit if it: (a) increases its business capacity by at least 20 percent compared to its previous production capacity, or (b) expands the land of the place of business, or (c) expands the buildings of the place of business by at least 20 percent, or (d) expands the number of cars or truck traffic from the facility by more than 20 percent, or (e) expands its hours of operations to begin earlier than 6:00 am or to end later than 10:00 pm.”

**3.5. CRITERIA FOR SETTING USER FEE RATES**

**3.5.1. FIRST PART: DETERMINING THE AMOUNT OF USER FEE RATES — ARTICLE 20**

This is the third of the four Articles that I think are most important to revise and clarify in order to achieve the dual goals of promoting investment and modernizing decentralized local government. The current draft language is correct in that it limits user charges to administrative expenses and field verification costs, but neither of those categories is defined narrowly. The risk of a poor definition of user charges in Indonesia – as in many other countries – is that local governments are sometimes tempted to more-than-recover their actual costs of operating the H.O. system. Based on discussions

with the drafting team, I understand that some local governments were treating the user charge as an opportunity to generate general revenues for government operations – i.e. as an indirect tax on business unrelated to the cost or providing services to that business or mitigating the impacts it has on the community. That was not the intent of the original H.O. permit requirement – which was focused on preventing or mitigating adverse impacts, not generating revenue. In some cases local governments have apparently extracted from enterprises a promise to build a community or religious facility completely unrelated to the impacts of the development. In some cases, the idea of a user charge seems to have gotten entangled with the idea that enterprise should “pay for its disturbance” to the community regardless of whether payments were used to offset its impacts.

During my visit to Indonesia, the drafting team was already working on ways to refine what were allowable administrative and field verification expenses. Following my return I received further questions on this topic and my response to those questions is attached as Exhibit 3 to this document. There are many ways to address this concern. One is for the Regulation to include a table (probably as an attachment) listing expenses that can be included in calculations of user charges. A second is for the Regulation to clarify that user fees shall not be used to exact payments to the local government to “compensate” for disturbances. Another way to word this is for the Regulation to say that if the H.O. permit process finds the types of “disturbances” listed in Article 6, the local government can deny the permit or condition its approval by imposing requirements to offset its impacts (for example, by widening roads, or by adding security measures), but cannot exact money or social infrastructure to “compensate”. Any conditions or infrastructure exacted shall be directly related to disturbance and will reduce the disturbance. The key point is to limit user charges so that they do not include social compensation beyond the costs to the local government to operate the permit system or monitor compliance with H.O. Permits.

### **3.6. PUBLIC PARTICIPATION**

#### **3.6.1. ARTICLE 22**

This is the last of the four Regulation provisions where I think clarification are most required. The original H.O. permit system required that neighbors around specific types of proposed businesses or activities be informed about the application for a H.O. permit, but that the local government retain the power to issue or not issue the permit. Presumably, the neighbor notification requirement was to give those potentially most affected by the enterprise a chance to comment and inform the judgment of the local government permit issuer.

Based on discussions with the drafting team, it appears that some local governments have adopted a practice in which the local government or the applicant itself must circulate a consent form to the immediate neighbors and obtain their consent to the proposed enterprise. In some cases the local government will only issue the H.O. Permit when 100% consent has been obtained. This approach has many problems, and the Regulation should be clear that it is not allowed. The first and most serious problem is that it effectively delegates the local government permitting power to the neighbors – people who were not elected to office or accountable to the citizens at large, and who may make decisions on grounds unrelated to the facts of the proposed enterprise.

In other countries, similar delegations have resulted in neighbors refusing to give consent because of the class, or race, or religion of the applicant, or because of personal dislike, or because of a general desire to avoid change in the neighbor – or even because another neighbor has given consent and the two neighbors do not get along. The opportunities for unprincipled decision-making are myriad, and few citizens would have the training or discipline to limit their decision-making to the criteria listed in Article 6.

The second problem is that it provides opportunities for extortion from the enterprise. Unscrupulous neighbors may condition their consent on obtaining money, or a job, or something else from the applicant. A third problem is that the impacts of a proposed enterprise are not confined to the immediate neighbors – they may affect residents and voters along roads leading to or from the proposed facility, or downwind of the proposed facility. Delegating the decision through a neighbor consent system disenfranchises some of those affected – citizens who should rightly have an opportunity to comment and have their concerns heard by someone with the interests of the entire community in mind.

The fourth problem is that an applicant who is unable to obtain 100% consent from the neighbors may submit a set of signatures and claim that it represents full consent. This may happen either because some neighbors refused to consent or because the property was owned by absentee landowners who could not be located. In many cases, the local government either does not have accurate records of all neighboring parcels or does not have the time to check those records for every H.O. application, so inaccurate forms are submitted and acted on even when there are significant and legitimate disturbances involved. Finally, because it takes time to locate the list of neighbors and circulate the consent form, “middlemen” are sometimes hired to perform those tasks for the applicant or the local government, which adds to the cost of obtaining H.O. Permits.

For all these reasons, the Regulation already states that the role of the public is through comment following notification by the local government (much like the original H.O. scheme). However, it does not explicitly forbid the use of “full neighborhood consent”, and it should. One way to achieve this would be to add a provision that the local government cannot fulfill the right of participation by requiring that the applicant obtain consent from some or all of the surrounding property owners. A second way would be to add text Consider adding a provision that the right of public participation does not include the right to stop a proposed investment by withholding individual consent. Possible language includes the addition of a section 7 reading: “The right of public participation does not include the right to give individual consent to proposed investments, and local governments may not require a permit applicant to obtain individual consent from neighboring property owners or other citizens.”

### **3.7. TYPES OF AND BASES FOR IMPOSING ADMINISTRATIVE PENALTIES**

#### **3.7.1. FIRST PART: TYPES OF PENALTIES — ARTICLE 25**

This article includes a list of types of penalties that can be imposed on enterprises for violations of the Regulations. However, the list seems to mix penalties that can be imposed after an H.O. permit is issued with steps that can be taken before a permit is issued. Sections (a) issuance of warnings, (d) freezing of permits, and (e) revocation and cancellation of permits, appear to be penalties, while (b) rejection of permits, and (c) deferral of permits appear to be steps that can be taken if H.O. application materials appear to be incomplete or that potential disturbances cannot be adequately mitigated. It would be good to separate the two lists.

In addition, during my visit to Indonesia it appeared that some local government officials wanted to strengthen the list of penalties to include revocation of other permits (in addition to the H.O.) that the local government may have issued to the permit holder, or to wind up the violating company itself. In general, local government powers to enforce permit conditions are limited to actions concerning the permit that has been violated. While there are exceptions (i.e. cases where violation of one permit can result in suspension of others) they are generally limited to very serious violations. It is important that the penalties remain limited to those concerning the H.O. permit itself, except perhaps in cases where the violation endangers public health or safety.

### **3.7.2. SECOND PART: BASES FOR IMPOSITION OF PENALTIES — ARTICLE 26**

This article describes the conditions in which each of the listed items in Article 25 can be imposed, and seem to confirm the blending of the two lists described Article 25. The list of bases for imposition should be separated to parallel the separation of penalties in Article 25.

## 4. CONCLUSION

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Indonesia's nuisance/disturbance control legislation ("Hinderordonnantie") is very dated and has evolved from its original, limited purposes into a general regulation applied to a very wide variety of enterprises, and one that is used not only to address enterprise impacts but to ensure that the enterprise has complied with all prior (related or unrelated) permits and licenses. As responsibility for administration of the H.O. Permit system has shifted from the central to local governments, wide variations in permit requirements and user fees have emerged.

In some cases, local governments appear to have delegated their responsibilities for evaluating enterprise disturbances in favor of a written consent process involving the immediate neighbors of the site where investment is proposed. In other cases, local governments have apparently seen the H.O. requirement as a way to generate local revenues, and in other cases as a way to extract community benefits that may or may not be related to enterprise impacts. As a result investors and potential investors are exposed to an H.O. system with unpredictable procedures, costs, and time requirements, and one that includes substantial potential for abuse and unjustified payments and exactions. This creates a climate that is not conducive to business investment and local economic development.

SENADA (in conjunction with The Asia Foundation) has assembled a team to prepare a background paper on these issues and to prepare a draft Ministry Regulation for consideration by the Ministry of the Interior that would address these issues. The anticipated outcome is an interim solution that would better guide local government use of H.O. Permitting powers during the next several years while Indonesia is shifting towards a system of spatial planning and land use zoning that will eventually replace the H.O. Permit system. This paper includes comments on both of those products from the perspective of other land use control systems.

While there are many areas for further refinement or clarification of both the background paper and the draft regulation, both are solid products that generally fulfill their intended purposes. The basic areas for improvement in the draft regulation are to:

- Clarify and refine what types of enterprises are subject to H.O. Permitting and what types are exempt.
- Clarify and refine what types of disturbances need to be addressed and what types do not.
- Clarify that user fees are to be calculated to help local governments recover the administrative costs of the system, and not to "compensate" the community for the identified disturbances.
- Clarify that the local government – not the neighbors – are to make the decisions regarding issuance of H.O. Permits and conditions attached to them based on community-wide judgments.

If these four areas can be addressed, the draft Ministry Regulation will go far towards curbing misuse and overuse of the H.O. Permitting process, which will help reduce barriers to investment in the Indonesian economy. One important side benefit is that it will also guide Indonesia's local governments towards a proper understanding of their roles in local land use and help them build the skills needed to play that role successfully.

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# ATTACHMENT 1: POWERPOINT PRESENTATION OF JUNE 13, 2008

**Preliminary Thoughts on  
Draft Ministerial Regulation on  
Procedures for  
Disturbance Permits**

Prepared by Consultant Group  
For UABD-AMDA/UKL  
June 13, 2008

**Procedures for Disturbance Permits**

**Assumptions**

- Major goal is reduction in delays and costs to potential investment due to local government H.O. requirements
- Key areas of concern:
  - Uncertainty as to types of businesses covered
  - Uncertainty as to types of disturbances reviewed
  - "Neighbor Signature" system and potential for veto
  - Potential for abuse at time of extension
  - Amounts of user charges / exactions

**Procedures for Disturbance Permits**

**Areas for Attention**

- Article 3 – Objectives
- Article 6 – Types of Disturbance
- Article 9 & 18 – Extension of Permit
- Article 16 – Activities and Businesses that do Not Require Permit
- Article 17 – Amendments to Permits
- Article 20 – User Fees
- Article 22 – Public Participation
- Article 26 – Penalties

**Procedures for Disturbance Permits**

**Article 3 – Objectives**

b. Protecting the environment

- ✓ Need to be sure to exclude those that already have AMDAL / UKL / UPL
- ✓ Only one environmental review per application

**Recommended Text:**

b. "Protecting the environment in cases where the application is not subject to review under AMDAL, UKLAUPL, or other environmental review laws."

**Procedures for Disturbance Permits**

**Article 6 – Types of Disturbance**

- ✓ Very important to define what types of change are not considered disturbances and are not subject to objection from the community.
- ✓ Limit to disturbances that can be objectively verified and for which the local government can attach conditions to limit the disturbance (i.e. no night operation).
- ✓ List in Article 6 is very broad – opens the door to numerous objections and potential for abuse.

**Procedures for Disturbance Permits**

**Article 6 – Types of Disturbance**

(2) Physical – Limit to those items reviewed by AMDAL or UKL/UPL and clarify they are only reviewed if the application is not subject to those laws.

**Recommended Text**

"(2) Disturbance to the physical environment as mentioned in paragraph (1) letter a include damages to soil, ground-water, rivers, seas, air, and noise, for those projects that are not subject to review under AMDAL or UKLAUPL."

(2) Social Life – Limit to public safety and moral decadence – Do not allow objections based on social aesthety

**Recommended Text**

"(3) Disturbances to community social life as mentioned in paragraph (1) letter b include threats to public safety or moral decadence."

## Procedures for Disturbance Permits

### Article 6 – Types of Disturbance

- (4) Economy – Limit to damage to public assets  
– Do not allow objections based on new competition

#### Recommended text

"(4) Disturbances to the economy as mentioned in paragraph (1) letter c include damages to public assets (such as roads) that reduce production for others in the community, but do not include damages from increased competition.

- (5) Community psychology – Eliminate this category  
– All changes have this effect and it should not be factor in disturbance review

Clarify that when local government has adopted zoning regulations those will be presumed to address issues of social life and economic issues – and local government can no longer review those through H.O.

Don Elliott

## Procedures for Disturbance Permits

### Articles 9 & 18 – Extension of Permit

- ✓ Draft is Correct – But Important to Emphasize
  - ✓ IF business has not changed scope of operation – then 5 year extension is automatic upon payment of fee and attachment of documents listed in Article 18.
  - ✓ Additional review is only required if enterprise has expanded its scope, etc. – which should be handled through an amendment under Article 17.
  - ✓ Change in surrounding neighborhood during a five year period does not require re-evaluation of the H.O.

Don Elliott

## Procedures for Disturbance Permits

### Articles 9 & 18 – Extension of Permit

- ✓ Investors get the security that they can continue to operate the basic business (without expansion) regardless of changes to surrounding neighborhood. Local government is responsible for preventing / controlling / mitigating development in surrounding areas once the enterprise has obtained H.O. and other permits.

#### Recommended Text

"A nuisance permit shall be valid for five years and shall be extended for additional five year periods as long as the activity continues to operate. Changes to the scope of business operations shall be addressed through the amendment process in Article 17, and not through the permit extension process."

Don Elliott

## Procedures for Disturbance Permits

### Article 14 – Obligations of Permit Issuers

- ✓ Consider adding a provision that permit issuer must make decision based solely on whether the application creates one or more of the specific types of disturbance listed in Article 6 and whether the application can be subject to conditions to mitigate those impacts. In addition, consider adding a provision that the permit issuer may not deny a permit based on objections that are unrelated to the specific types of disturbance listed in Article 6.

#### Recommended Text:

"(2) (f) make a decision on the H.O. application based solely on whether it creates one or more of the specific types of disturbance listed in Article 6 and whether those disturbances have been mitigated to an acceptable level. The permit issuer may not make a decision to deny or condition an application based objections or claims of disturbance that are not listed in Article 6."

## Procedures for Disturbance Permits

### Article 16 – Activities and Businesses that do Not Require a Permit

- ✓ Very important to clarify this point
- a. Exemption for properties that already have AMDAL – Good  
– Consider adding exemption from environmental review for those that have UKL/UPL

#### Recommended Text:

"e. Companies that already have received UKL/UPL, which shall be exempt from review of disturbance to the physical environment under Article 6, paragraph 2, but not from review under paragraphs 3 and 4."

- b. Exemption for properties located in Industrial Zones, Bonded Zones, and Special Economic Zones – Good.

Don Elliott

## Procedures for Disturbance Permits

### Article 16 – Activities and Business that do Not Require a Permit

- c. Exemption for those in buildings that already have H.O. – Good  
– Consider adding exemption for those in business parks and industrial parks that already have H.O.

#### Recommended Text:

"c. Those in a building or a business park that already has an AMDAL or a disturbance permit

- d. Exemption for small businesses that do not create disturbances  
– An invitation to argue  
– Consider replacing with exemption for micro, small, and home businesses and that have only indoor operations

#### Recommended Text:

"d. Small and micro businesses and home occupations that do not conduct operations outside of a closed structure

## Procedures for Disturbance Permits

### Articles 20 – Users Charges

- ✓ Draft needs clarification. Correct to limit user-charges to administrative and field verification costs – but text is too open-ended.  
-- Team is discussing clarifications already
- ✓ Consider a table of allowable costs that can be recovered
- ✓ Consider adding a statement that user fees shall not be used to exact payments to the local government to “compensate” for disturbances.
- ✓ If disturbances are found, local government can deny or condition approvals, but cannot exact money or social infrastructure to “compensate”. Any conditions or infrastructure exacted shall be directly related to disturbance and will reduce the disturbance.

## Procedures for Disturbance Permits

### Articles 22 – Public Participation

- ✓ Draft is vague as to precise role of public
- ✓ Consider adding a provision that the local government cannot fulfill the right of participation by requiring that the applicant obtain consent from some or all of the surrounding property owners.
- ✓ Consider adding a provision that the right of public participation does not include the right to stop a proposed investment by withholding individual consent.

#### Recommended Text:

“(7) The right of public participation does not include the right to give individual consent to proposed investments, and local governments may not require a permit applicant to obtain individual consent from neighboring property owners or other citizens.”

## Procedures for Disturbance Permits

### Articles 26 – Penalties

- ✓ Clarify that penalties are only related to the permit itself.
- ✓ Local government may enforce, suspend, or revoke the permit, and can impose fines for operation after the permit is suspended.
- ✓ Generally, revoking one permit does not give the local government the right to revoke other permits where the business is not in violation.
- ✓ Violation never gives the local government the power to wind up the company or force it to stop operations unless continued operation affects public health or safety.

Don Elliott

# ATTACHMENT 2: RESPONSES TO QUESTIONS FROM DRAFTING TEAM

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## MEMORANDUM

**FROM:** Don Elliott  
**TO:** David Ray, SENADA,  
Frida Rustiani and Neil McCulloch, The Asia Foundation  
**DATE:** June 26, 2088  
**RE:** Questions Regarding Proposed Ministerial Guidance on Local H.O. Permits

Thanks for your comments. I enjoyed my short visit and hope it was helpful to you and the team. Here are my thoughts on your questions.

- 1. We know that for big scale of business AMDAL is strongly required. And for the small and medium scale of business they are a subject for UPL-UKL. In the draft we are explicitly mention that for those businesses that subject for AMDAL is no need HO. So what about UPL-UKL? if HO is also no need for those businesses who have UPL-UKL, it's mean that no HO anymore. It that the best arrangement?**

Response: In my suggested edits to the draft regulation, I focused on three types of impacts that are legitimate for communities to address through the H.O. process – (a) environmental, (b) social, and (c) economic. I limited the social category to include only public safety and moral degradation, and limited the economic category to include only damage to public resources (not competition). We eliminated the subjective category of community psychological impacts from the scope of HO.

I think it is helpful to think about the overlap of AMDAL and UPL-UKL in that context. As I understand it, the scope of AMDAL is much broader than UPL/UKL. The AMDAL legislation addresses both environmental and social concerns, and that (economic) damage to public resources is probably covered by the environmental review. In addition, I understood that although AMDAL is just a review process/recommendations, in practice those recommendations are reflected in either the location-specific permits or the industry-specific permits and therefore become binding on the enterprise. If that is true, then additional H.O. review would serve no purpose, which is why those subject to AMDAL should be exempt from the H.O. permit requirement.

In contrast, I understand that UPL-UKL addresses mostly waste-related environmental issues (not all environmental issues and not social or economic impacts). Even if the recommendations of a UPL-UKL review are made binding on the enterprise through location-specific or industry-specific permits there are still several legitimate topics that local governments might want to address through the H.O. process. So those subject to UPL-UKL should not be exempt from H.O. In that case, however, H.O. review should be limited to environmental issues not reviewed in UPL-UKL and to the limited list of social and economic impacts listed above.

One analogy from U.S. practice may be helpful. In siting telecommunications facilities in the U.S., the enterprises must comply with local laws and regulations, which usually require some sort of public hearing where the citizens can speak. However, the scope of the public hearing cannot include discussion of the electro-magnetic effects of the proposed telecom facility. The federal government has conducted studies on those electro-magnetic effects and determined the safe level, so the law says that the electro-magnetic effects have already been reviewed. If the proposed facility

meets the federal standard, the electro-magnetic effects cannot be reviewed (again) at the local level. Citizens cannot object to the facility on the basis of electro-magnetic effects that have already been reviewed by others. By analogy, I suggest that citizens cannot use the H.O. process to object to environmental impacts already covered by UPL-UKL, but they can object on other grounds not covered by the UPL-UKL review.

**2. In almost all local regulation on HO, it mentioned specifically kind of businesses/activities that subject to HO. Do we need to change it to more on externalities?**

Response: Both approaches (listing of activities and listing of externalities) are used in the U.S. and Canadian systems. Basically, the listing of kinds of businesses/activities is easier for local governments to administer and it is often used by smaller local governments with fewer staff. As a matter of economics, though, it is probably better to base the list on externalities – that way industries are given an incentive to use better technologies that have fewer impacts. While a list-based approach might list “metal-plating” activities as requiring an H.O. permit, that would treat both a polluting and a non-polluting facility the same way, and would remove any incentive for metal-platers to find non-polluting technologies. An externality based approach would allow the non-polluting enterprise to continue without conditions (for example, without a condition that waste water be sent to settling ponds before being discharged into the river), and would (over time) encourage the use of the non-polluting technology in order to avoid those conditions. However, it is much harder for smaller local governments to implement externality-based systems because it is difficult for them to know whether the applicant’s claims are true. The applicant may claim that new technology will avoid any pollution, but local government staff have to take their word for it, and when the enterprise is in fact built and emits pollution, it may be difficult to go back and force them to implement conditions (for example, to retrofit settling ponds for waste water after the fact).

From the point of view of encouraging investment, the best approach might be a combination of the two. The local H.O. ordinances could have a list of activities that trigger H.O. review. Non-polluting or minor enterprises (like very small retail shops) would not be on the list, because their impacts are minor or non-existent. Some applicants could see that their activity is not on the list and would not need to apply for an H.O. at all. However, if an activity is included in the H.O. list, that would trigger an H.O. review based on externalities – those with fewer impacts get a more limited review. For example, an industry that could document that a new technology resulted in no air pollution would not be subject to conditions for that impact. While more complicated, this keeps in place the incentive for industrial/commercial applicants to use better technologies in order to reduce their impacts. While local governments would need to review externalities, that would only apply to activities included in the list – which is easier than reviewing them for everyone.

**3. On retribution issue. Your suggestion is to change completely the current system that using some indexes by flat system to cover administrative plus field test and monitoring cost. Please give us more explanation on this specially regarding to any component that we should consider in this topic. This is very important, especially in condition when local revenue is one of the biggest concerns of the local government recently. So we need to give them as rational and clear as we can, to show them that there is no reason for them to do un-reasonable charges.**

Response: I realize that my suggestion to move towards administrative cost recovery fees represents a major change from the current practices of some local governments, and that some of the discussion during my visit may not have been completely clear. To start with, it is important to understand the difference between the three different types of fees that we discussed: (1) Administrative Fees (which can include field test and monitoring costs); (2) Infrastructure

Development Fees (sometimes called Development Impact Fees) and (3) Fees to compensate for the disturbance (including “pollution fees” or so-called “pay-to-pollute” systems. In the U.S. and Canadian systems, local governments are almost always allowed to charge administrative fees, and are often allowed to charge infrastructure development fees if they follow rules designed to avoid over-charging the enterprise for those costs. They are almost never allowed to impose fees designed to compensate the community for the disturbance itself, because that approach is considered too subjective and open to abuse by local governments.

While there are some cases where the federal or state governments (not local governments) impose fees based on the amount of pollution or disturbance, those fees are rare and are almost always calculated based on the cost of mitigating the disturbance. For example, a fee related to the expansion of an airport runway might be calculated based on the cost of installing sound-proofing in the houses most affected by the longer runway – but the fees would have to be spent for that purpose. I am not aware of any cases in which a government entity in the U.S. is allowed to charge a fee for disturbance and just deposit the money in its general operating account. The theory behind this restriction is that if a proposed enterprise creates too much disturbance the local government should just deny the permit. If it creates an acceptable level of disturbance the local government can attach conditions to reduce the level of disturbance (for example, closing earlier in the evening, or reducing their level of traffic), but that any conditions should be directly related to those impacts and designed to reduce them.

With that background in mind, the usual steps in calculating administrative cost-recovery fees are these:

- a. **Estimates of Time Spent by Local Personnel.** The local government interviews its own personnel to estimate the time spent on different types of permits. This is usually done so that fees for discrete activities can be separated. For example, a local government might estimate the time spent to review an application for a basic conditional use permit, and then estimate separately the time required to review a traffic impact study if the proposed activity is so big or complex that a traffic impact study is needed. In order to support this type of analysis, some local governments require their staff to complete timesheets identifying the activities they worked on each day (often electronically), so that at the end of each year the local government has updated information about what types of applications require the most staff time to process.
- b. **Salary and Benefit Calculations.** The amount of time required to process an application is multiplied by the salary and benefits of the staff members that need to work on it. For example, if it takes 5 hours of work for a staff member to process a conditional use permit, that works out to .25% of a normal 2000 hour work year. If the salary and benefits for that employee cost the local government \$30,000 per year, then  $.0025 * 30,000 = \$75$ .
- c. **Indirect Cost Calculations.** The local government then allocates its general overhead expenses among its staff. Generally those include the cost of supervisors, monitoring staff, and support staff (those who work in the office but do not actually review permits), general staff training costs, office supplies, vehicle expenses, etc. If the office reviews 500 permits per year, and reviewing permits represents 25% of its work (the remainder is in preparing plans, or meeting with the public, etc.), and its overhead expenses for the office are \$200,000, then they might calculate overhead expenses per permit as  $(\$200,000 * .25) / 500 = \$100$ .
- d. **Total Costs.** The local government then adds up the direct and indirect costs of an average permit. In the example above that would be \$175.

- e. **Comparison Check.** The local government often does an informal survey of nearby local governments to see whether these calculations appear accurate and competitive. While many local governments want to recover all or most of their administrative costs through fees, they know that they will be criticized if their administrative fees are twice or three times as high as other nearby local governments. In addition, if their fees are twice or three times as high as their neighbors' they know that one or both government's calculations are flawed. To remain competitive and compensate for possible calculation mistakes, local governments sometimes agree to cut the calculated fees to lower amounts, even though it means they will not recover all the costs of permit review.

I have attached a short handout from Santa Clara County, California, describing their approach to calculating administrative cost recovery fees, which is similar to that described above. Most local governments then assemble the various fees into a standard fee schedule. In order to reflect the difference between reviews of simple versus complex projects, many local governments organize the fee schedule to reflect the following factors:

- a. Many fees are set at a standard rate – they do not vary with size or complexity of the project.
- b. Some fees include a standard base fee plus an amount for (1) each residential unit or (2) acre of commercial land or (3) square foot of commercial building included in the project application.
- c. Some fees vary by the value of the project being proposed, or by the amount by which the value exceeds a base number. In the U.S. this means that the fee will not be collected until the building permit is issued, because it is only at that stage that the applicant needs to calculate the value of the land and construction. (Building permits in the U.S. are usually based on the value of the construction involved, because that is proportionate to how many staff hours it will take to inspect the construction). It is important to use this approach only if staff review time will really be proportionate to the value (as opposed to the building size or land area) of the project – otherwise it will penalize valuable project that occupy small land areas – which are generally the types of enterprises local governments would like to encourage.
- d. Where an application will require the local government to notify property owners around the project about the proposal, the costs of that notification are sometimes included in the fees.
- e. Where the application will result in an official document that needs to be recorded in the public land records to be valid (and to put future buyers of the property on notice about the terms of the approval), the local government sometimes recovers the cost of recording the document as a part of the fee.

Even though most fees can be fixed in a schedule, local governments sometimes want to protect themselves against the chance that a particularly complex application will be filed – one that will take them much more time than average to review. For those cases, the local government sometimes applies an hourly rate and notifies the applicant that it will be charged a base fee up front and an additional fee if the review takes longer than X hours. Since this leaves the applicant somewhat at the mercy of the local government, the total possible fee is sometimes “capped” so that it will not exceed a fixed number. In almost all states, the fee schedule is a public document – the public can obtain copies upon request, and the fee schedule is sometimes required to be published once in the newspaper.

I have attached a sample fee schedule from Teller County, Colorado, that illustrates some local government land use fees and how they are organized into categories. You will note that there are

no separate fees for monitoring services after the initial permit is issued. In practice, most local governments treat that as an “indirect expense” of their operations – they don’t charge a separate fee for it, but they included the fair share cost of future inspection services in the initial cost of the fee through step 3 in the fee calculation example above. For example, if there are two employees whose job is to inspect properties, then their salaries and benefits are included as indirect costs and a fair share of those costs is added to the cost of each permit issued.

These types of analysis may be beyond the capabilities of some of Indonesia’s local governments. If that is true, the job of calculating local government administrative review fees could be simplified in two ways. First, the Ministry guidance could specify the categories of applications subject to the H.O. requirement – for example, retail shop under 30 square meters, manufacturing/assembly facility under 2,000 square meters, etc. This would help local governments to evaluate their actual review costs in each category (rather than just aggregating them over all types of applications). Second, an NGO or the Ministry could conduct its own survey or estimate of local government expenses for these various categories of permits and communicate those figures to the local governments as general guidance. The Ministry might go further to suggest that fees that exceed those averages by 50% or 100% will need to be supported by a local study of actual administrative costs. That approach would allow local government to (at least initially) avoid the time and expense of conducting their own staff time and direct/indirect cost studies by simply setting the fees at or near the amounts suggested by the Ministry. But it would also give local government the ability to charge and recover higher costs if they want to take the trouble to justify them.

**4. In the three public consultations, LGs keep asking to have this decree as detail as we can. I can understand their concern because the detail can help them easier to make a new arrangement and they can always say that all arrangements comes form the central government. But of course that not the result that we would like to see. How to make LGs more confident to make their own decision on HO?**

Response: This is a common problem in decentralization programs. The ability to write clear/competent local regulations is developed over time and most local governments develop those skills slowly. The three strategies that can help them develop confidence and skills more quickly are: (1) Template regulations that allow local variation, (2) Local-to-Local sharing of best practices, and (3) Drafting workshops/education.

- a. Template regulations are model regulations that give the local governments the basic structure of the ordinance (i.e. shows them how to organize them so that they cover (a) the source of authority, (b) key definitions (c) substantive regulations (d) review/decision procedures and criteria, and (e) enforcement. Within each section, however, the template provides alternative language choices – for example, it may include three alternative wordings ranging from very specific/detailed to more general, or ranging from strict to lenient. Using templates makes sure that local governments will not fail to address a key issue that could trip them up later (for example, failing to define key terms, or failing to specify the penalty for violation), while focusing their attention on substantive choices. It encourages debate by those who favor specific versus general regulations, or between a strict or lenient approach, and that debate is the key way local governments learn to resolve these issues and craft good regulations for themselves.
- b. Local-to-Local sharing of best practices means that the Ministry of Home Affairs or some other body (maybe an NGO) collects examples of local regulations, finds the clearest/most competent ones, and distributes them as examples to other local governments addressing the issue. Sometimes the Ministry or NGO sets up a database or clearinghouse of good examples

that are available upon request by the local governments. Other times the Ministry or NGO just distributes good examples by e-mail to a contact person in local government who collects them for future reference. In my experience local governments are often more willing to start with an example from another local government and tailor it to their situation than they are to start with a model proposed by the central government. Sometimes central government examples are too detailed, too thorough, or too academic for local governments, while examples from other local governments are more likely to be at the right level of detail and readability. Even in the U.S. and Canada, local governments share and work off each other's local regulations more often than they work from central models.

- c. Drafting workshops/education can be a valuable part of a long-term strategy to build these local skills. Usually an NGO provides these workshops that give local government officials hands-on experience drafting regulations based on real-life case studies. For example, if this were implemented in Indonesia, early courses might use exercises based on drafting H.O. or building permit ordinances. In many cases, the regulations drafted during these workshops later get circulated as examples among local governments even if they have never been adopted – i.e. they are treated as more than training exercises but as opportunities to draft documents that your local government will actually use.

I hope this is helpful. Let me know if you have more questions or comments.

## ATTACHMENT 3: RESPONSES TO COMMENTS ON FINAL REPORT

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1. **The Requirement for getting a nuisance permit is now easier only requiring documents such as: (a) Copy of identity [KTP] of the applicant; (b) Copy of the deed establishment of the entity if it is legal or a notarial deed if it is not a legal entity; (c) Copy the land title, for the mid-sized companies, (d) Letter of business permit [SIUP]**

Response: Good, no changes to the report needed. It sounds like the drafting team is trying to limit the application materials to the minimum necessary to ensure that they are dealing with a “real situation” – i.e. a registered enterprise that is in good standing and has some right to use the land referenced in the application. I hope the team has reviewed the materials to avoid duplication – for example, if the enterprise had to show b in order to get a, then the local government should not make them present b again – just a. I assume the list does not include any “duplicates” like that.

2. **A nuisance permit is clearly defined for a minimum of three years and a maximum of five years.**

Note: The drafter had originally planned to set a five-year period during the previous FGD, but was met with the objection of the local government who requested that the permit should be limited for 3 year for oversight purposes. Hence the drafter gave an alternative that the validity of a nuisance permit shall be given with a minimum of 3 years up to a maximum of 5 years.

Response: I understand the issue and don't think the paper needs to be revised. I think a single, longer period would be more pro-investment, but the team is clearly trying to balance that goal against others.

3. **Small and medium businesses that are not likely to impact its location such as home industries including tailoring and catering businesses do not need to have license permit.**

Note: the drafter did not specify any limitation term regarding the scale of small medium enterprises.

Response: I gather that the team agreed in concept but has not agreed on a threshold number/size on what would be exempt. I think it is pretty important to state some threshold or this could be a big loophole allowing over-reaching by the local government and uncertainty in the minds of small businesses. I already made this point in the report, however, so no edits necessary.

4. **To extend the license of a nuisance permit, the drafter has simplified the requirements by just submitting: (a) A copy of identity and deed of establishment of the companies; and (a) A copy of the previous license permit**

Response: Sounds very good. No edits to report necessary.

5. **A change of nuisance permit is also needed if companies change their main activity or expand their business activities.**

Note : requirements to change the nuisance permit when a company changes its activities have not been regulated (they have not discussed the change of legal entities, for example, if a private limited

company became a public company or if a merge, consolidation or acquisition with other companies took place, etc.)

Response: The first sentence sounds fine, and I assume the draft will state how much expansion of business activity etc. will require a amendment (very small expansions should not). I cannot tell whether the Note means that the drafting team decided that changes in corporate form (from private limited companies to public companies, for example) should not require an amendment, or that the drafting team has not addressed the issue yet. I feel strongly that changes in corporate form should not require an amendment – the issue is land use impacts, which are not affected at all by changes of legal form/structure. When the time comes to renew the permit the submitted documents under 4.a above will reveal the change in status and the records will be updated as the renewal is processed. I made a small edit to clarify that point.

**6. The drafter agrees for the authority to issue a permit as such giving authority to the head of region [Bupati] and mayor [walikota].**

Response: This is a matter of Indonesian governmental structure and practice, and I have no comments on it.

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