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# ADVANCING REGULATORY REFORM IN INDONESIA

OPPORTUNITIES AND CHALLENGES

**AUGUST 2009**

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## **DISCLAIMER**

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# EXECUTIVE SUMMARY

Regulatory reform is a challenge for all countries – small or large; developed or developing. Every government has a responsibility to provide public services and a social-economic, legal and policy environment that enhances the overall public good. The challenge is how to do that without unfairly favoring one part of society over another, without causing wasteful regulatory enforcement burdens and economic inefficiencies that unduly raise costs for businesses and citizens, and through the promotion of legal certainty and the rule of law.

Indonesia has advanced a number of regulatory reform initiatives over the last six years. Although these initiatives have generated important results, the successes have been largely isolated and non-reinforcing. A systematic approach to regulatory reform has not been articulated politically nor implemented in law or policy. Wide-spread complaints continue that the regulatory system is too complex, confusing, intrusive and costly, resulting in a high-cost economy and a lack of public confidence in the quality of government decision making and rule of law. Successes to date have resulted from concerted efforts in a particular ministry, group of ministries, local governments, or sector; but are these sustainable over time as individual champions move to different positions, and what stops the generation of new regulations or administrative practices that may circumvent such advances, recreating problems five to ten years later?

The potential for sustained economic, legal and governance benefits of a higher-quality regulatory system are apparent to many. The sheer magnitude of the problem, however, appears to be hindering systematic efforts to improve Indonesia's regulatory system – both in terms of the number and reach of possibly tens of thousands of regulations by national and local governments, and in terms of the political challenge of overcoming vested interests that attach to many of these regulations and poor coordination among government agencies.

## Strong Rationales for Regulation Reform

There are strong rationales for Indonesia to pursue a broad-based regulatory reform program. These include:

- **Legal Certainty** – ensure that regulations are transparent and clearly worded, legally authorized, consistent with other regulations, and effectively applied in practice.
- **Economic Growth** – stimulate business and economic activity that generates jobs, exports, and incomes through innovation and increased productivity by minimizing unnecessary regulatory burdens and reducing Indonesia's high-cost economy.
- **Anti-Corruption** – reduce opportunities for corrupt acts through greater regulatory transparency and reduced bureaucratic discretion.
- **Public Services and Bureaucratic Reform** – improve the delivery of public services and the implementation of government activities.
- **Enhancing Democratic Processes and the Rule of Law** – improving regulatory decision-making processes and enforcement in practice raise the respect by Indonesian citizens for democratic processes and the rule of law.

The overarching goal of a systematic regulatory reform effort is to develop a regulatory system made up of government and private institutions and people at the national and local levels that by law and by practice ask hard regulatory quality questions at all stages of the development, implementation and monitoring of regulatory policy and implementing procedures. It's the creation of a mind-set, a value system and learning process at all levels of government and civil society that favor high-quality regulation.

It works literally each day to eliminate the many irritating but often essentially minor regulations that are poorly written and legally inconsistent. And, it stimulates a more “evidence-based” process that takes into account the full public interest when making hard decisions on more complex regulations and policy issues with serious and wide-ranging impact.

## **Core Elements of a Systematic Regulatory Reform Effort**

- **Enhance Political Will and Define Manageable Problems and Solutions** – Generate a broad political mandate for systematic regulatory reform; organize/socialize the challenges of regulatory reform into a more manageable form that is linked to national development objectives and that is supported by viable solutions with implementable approaches and tools.
- **Inventory, Review and Simplify Existing Regulations** – Inventory and maintain / revoke / simplify / strengthen existing regulations and implementing procedures.
- **Ensure That New Regulations Will Meet High Regulatory Quality Standards** – Strengthen standards and legal processes for drafting new regulations and monitoring the on-going viability of existing regulations.
- **Publish an Up-to-date e-Registry of Regulations and Procedures** – Develop, publish and continually update a user-friendly e-registry available to the public that serves as a national database of all relevant regulations and administrative procedures legally in effect.
- **Adapt in the Near-Term; Transform in the Long-Term** – Strategically enhance existing capacities to carry out regulatory reform now; invest in transformative advances in institutional and human resource capabilities to sustain high-quality regulation over time.
- **Tactical Considerations** – Leadership; scope; transparency; accountability; communication; information technology; private-sector input; analytical tools; coordination and cooperation; multi-disciplinary.

Although there is considerable benefit from learning what has worked in other countries, ultimately each country must adopt a regulatory reform approach that achieves well-defined domestic development objectives and that is tailored to operate in that country’s context. As quickly becomes evident in any discussion in Indonesia about advancing a more aggressive regulatory reform effort, a number of real and difficult challenges exist and will be difficult to overcome. If international experience is a guide, however, other countries, both developing as well as developed, have confronted similar challenges and developed practical approaches that work through their internal constraints to advance meaningful regulatory reform.

## **Recommendations for Advancing a Systematic Indonesian Regulatory Reform Initiative**

Building upon a large body of international and Indonesian research and experience, we respectfully recommend some possible approaches for Indonesia to advance a systematic Indonesian Regulatory Reform Initiative. (Indonesian and international experience is evaluated in Chapters II and III, and greater detail and analysis underpinning the recommendations are provided in Chapter IV.)

### ***Enhancing Political Will and Organizing the Problem***

- **Create a Wise Person Group** to produce a White Paper on Regulatory Reform.
- **Include regulatory reform as a priority** in the 2010-14 National and Regional Medium-Term Development Plans, with budgetary allocations in Annual Government Work Plans.
- **Support more serious research:** create a Research Fund for Regulatory Reform.

## ***Inventory, Review and Simplify Existing Regulations***

- **Develop a comprehensive approach with accountability and deadlines to inventory, review and simplify existing regulations**, focusing on four key phases of operation:
  - 1) **Inventory Phase** – Develop an inventory of existing regulations and administrative procedures, published in a searchable, national database or registry and updated over time.
  - 2) **Regulatory Quality Review Phase** – Create analytical tools and procedures applicable to Indonesia to evaluate the quality of relevant regulations; apply basic (Brief or Lite) regulatory quality criteria to lower-level regulations, administrative procedures and forms, and apply more robust review criteria (RIA [Regulatory Impact Assessment] or RegMAP Comprehensive) to major laws and regulations with broad and substantial impact.
  - 3) **Recommendation Phase** – Prepare “implementable” recommendations to maintain, simplify, revoke or strengthen regulations; draft changes should be provided for simplification or strengthening.
  - 4) **Policy Action Phase** – Submit recommendations to competent authorities and facilitate a process for carrying out the recommendations in terms of legal changes; monitor the impact of the changes over time.
- **Support the BAPPENAS-DAPP Regulatory Simplification Program**, but consider broadening the BAPPENAS program to include stronger economic competitiveness criteria (compliance burden and economic inefficiency standards).

## ***Ensure That New Regulations Will Meet High Regulatory Quality Standards***

- **Revise Law No. 10 of 2004 and develop implementing regulations** to require a review using high-quality regulatory criteria (legal certainty, compliance burden and economic efficiency criteria) for all draft regulations and administrative procedures before approval.
- **Replace academic papers** with the new requirements in Law No. 10.
- **Require a 30 to 60 day public comment period for all draft laws and regulations** with a report that explains the need for the regulation and that includes the regulatory impact assessment.
- **Enhance harmonization processes of draft laws and regulations** by requiring a review using high-quality regulatory criteria.

## ***Publish an Up-to-date National e-Registry of Regulations and Procedures***

- **A national e-registry of regulations and procedures in legal effect** should be developed, published and maintained over time.

## ***Adapt in the Near-Term, Transform in the Long-Term***

- **Strategically augment existing capabilities to carry out a regulatory reform effort in the near-term;** Invest in transformative improvements in institutional and human resource capacities in the long-term.

## ***Tactical Considerations***

- **Make key tactical decisions within a larger strategic approach** with regard to: leadership; scope; transparency; accountability; deadlines; communication; information technology; private-sector input; analytical tools; coordination and cooperation; multi-disciplinary.

# CHAPTER ONE – INTRODUCTION

Regulatory reform is a challenge for all countries – small or large; developed or developing. Every government has a responsibility to provide public services and a social-economic, legal and policy environment that enhances the overall public good. The challenge is how to do that without unfairly favoring one part of society over another, without causing wasteful regulatory enforcement burdens and economic inefficiencies that unduly raise costs for businesses and citizens, and through the promotion of legal certainty and the rule of law.

Regulatory reform is typically part of a country's broader initiative to improve public governance. Good public governance means that government is responsive, effective, and accountable to the people.<sup>1</sup> There are several indicators of good public governance, such as: i) participatory process in public decision-making, ii) impartial and effective enforcement of the rule of law, iii) a professional civil service, and iv) clear and consistent laws and regulations delivering social benefits that outweigh the costs. To achieve good public governance, a country usually needs to pursue a range of reform initiatives, which includes regulatory reform and civil service reform.

Indonesia has advanced a number of regulatory reform initiatives over the last six years. In the economics area, reforms have focused on the investment climate, infrastructure building, public finance, financial sector and macroeconomic management, and state-owned enterprises and small and medium enterprises. On the legal side, laws have been promulgated to strengthen processes for developing new laws and regulations, and for more clearly defining the relative authorities between the national and regional/local governments, and between regional/local executive branches and parliaments.

Although these initiatives have generated important results, the successes have been largely isolated and non-reinforcing. A systematic approach to regulatory reform has not been articulated politically nor implemented in law or policy. Beyond the sectoral successes, the overall regulatory system appears to show little improvement. Wide-spread complaints continue that the regulatory system is too complex, confusing, intrusive and costly, resulting in a high-cost economy and a lack of public confidence in the quality of government decision making and rule of law. Successes to date have resulted from concerted efforts in a particular ministry, group of ministries, local governments, or sector; but are these sustainable over time as individual champions move to different positions, and what stops the generation of new regulations or administrative practices that may circumvent such advances, recreating problems five to ten years later?

International experience stresses the importance of taking a systematic approach to regulatory reform, an approach that builds upon strong national leadership to incorporate system-wide and coordinated improvements in regulatory governance, institutions, law, economic/social policy, and analytical tools and human resource capacities. This includes simplifying and rationalizing existing regulations and procedures, and ensuring that processes are in place for creating new high-quality regulations over time. It emphasizes transparency, accountability and interaction among government officials and between the government and private stakeholders, especially businesses.

How to develop a systematic regulatory reform effort is daunting for any country. It can be daunting first of all because of the magnitude of the technical problem to organize and understand the often interactive impact of what is typically tens of thousands of regulations and administrative procedures applied at national and local levels. This technical problem is evident in Indonesia where there is no comprehensive, consistent, continually-updated database of regulations at the national and local levels, nor a systematic analysis of the social-economic costs and benefits of the many regulations. Secondly, systematic regulatory reform is daunting because of the

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<sup>1</sup> Center for International Private Enterprise (CIPE) (2009), *The CIPE Guide to Governance Reform: Strategic Planning for Emerging Markets*, Washington, D.C., p.7.

complicated political calculus underpinning reform efforts, where concentrated vested interests benefiting from the status quo create political costs that make change and reform risky for elected officials, while what may be greater benefits from reform are often dispersed more widely and realized over time. These realities seem to underpin the common view that Indonesia does not have the political and technical wherewithal to initiate a comprehensive, top-down regulatory reform program (for example, as conducted by Korea after the Asian Financial Crisis or recently by Vietnam), but rather must build a higher-quality regulatory system from the bottom up, in a more piecemeal and gradual way.

If the overall system is too complicated to attack directly, then reform efforts tend to narrow to take advantage of windows of opportunity where high-level leadership and operational capacities exist to advance reform for a particular sector or a ministerial function – represented in Indonesia, for example, by the recent administrative/regulatory reform successes in tax and customs administration.

The economic imperative to stimulate a robust recovery from the recent slowdown, the political opportunity provided by newly-elected leadership, and the importance of developing a forward looking 5-Year Mid-Term Development Plan to guide government budgetary allocations, all make 2009 a critical time to consider elevating regulatory reform to a higher national development priority.

In this report, we respectfully offer analysis and recommendations for how it may be possible to move beyond ad hoc, sectoral/functional reforms that are inherently limited, toward a more systematic, mutually-reinforcing, and sustainable regulatory system – an approach that simplifies and rationalizes existing regulations and that creates an internal dynamic that raises the quality of decision making and regulatory results on a sustainable basis over time. Our analysis benefits from a large body of international and Indonesian research and experience (see the reference listing at the end of this report). We make no claim of original thought, but rather attempt to combine Indonesian and international insights into an integrative approach that we hope will prove useful for policy makers and will stimulate further discussion and research.

Chapter II reviews the strengths and weaknesses of the current Indonesian regulatory system. Chapter III summarizes what has become international best practice for regulatory reform and describes the experience of two developing countries – Vietnam and Egypt – that have recently mounted major regulatory reform efforts. In Chapter IV, we summarize the core elements of a systematic regulatory reform approach, and recommend a practical but integrated multi-track, multi-discipline approach that could be incorporated into an Indonesian regulatory reform initiative.



# CHAPTER TWO – EVALUATING INDONESIA’S CURRENT REGULATORY SYSTEM

From both foreign and domestic (business and non-business) perspectives, Indonesia’s regulatory system is in an urgent need for an overhaul. Indonesians have used various terms and adjectives to express concerns and dismay at the system, such as *amburadul* (messy), *carut marut* (disorderliness), *tumpang-tindih* (overlapping), *kacau* (garbled), *gagal* (failed), *merugikan* (disadvantageous), *bermasalah* (problematic), *tidak konsisten* (inconsistent), *hambat investasi* (hindering investment), *benang kusut* (knotted thread) and *tarian poco-poco* (the poco-poco dance).<sup>2</sup> Such words are frequently found in news headlines related to regulations. For example, an expert review team from the State Ministry for the Environment (KLH) in March 2009 was reported as affirming that up to 12 Indonesian laws related to natural resources overlapped and were inconsistent with each other.<sup>3</sup> This is a serious situation as there are likely to be many more lower-level regulations that have used one or more of the 12 laws as their legal bases, compounding the confusion and compliance burden.

Foreign perceptions of the Indonesian regulatory system have not been more favorable. The 2009 ‘Doing Business’ survey published by the International Finance Corporation ranks Indonesia 129th of 181 economies in the time and costs of complying with business regulations and procedures – representing a slippage of two positions compared to 2008. The 2008 Investment Climate Statement for Indonesia, issued by the US State Department, maintains that Indonesia has “a tangled regulatory and legal environment” that causes many firms to avoid the justice system. Laws and regulations are seen to be often vague and requiring substantial interpretation, a situation that leads to business uncertainty and rent-seeking opportunities. Interestingly, the same or a largely similar paragraph has been used in successive US investment climate reports for at least nine years since 2000, indicating no perceived progress. Meanwhile, a 2001 study funded by the Australian Department of Foreign Affairs and Trade (DFAT) encourages firms to be patient and to invest in relationships, which could prove useful to help expedite bureaucratic processes.<sup>4</sup>

In recognition of these problems, Indonesian policy makers – both within the economic and legal jurisdictions – have undertaken various reform initiatives over the past few years, with more in the pipeline. Most of these have been ad-hoc and sectoral regulatory measures that tend to address specific problems, frequently through the adoption of new laws and regulations. While these have been useful, no systematic revamping of the Indonesian regulatory system has been contemplated. Whereas some reforms have progressed, many other problematic laws and regulations often continue in effect, and new regulations are not appropriately screened to assure that future problems are avoided over time.

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<sup>2</sup> The poco-poco dance is an energetic Indonesian dance with lots of forward, backward and sideways movements.

<sup>3</sup> The 12 laws are: Law No. 5/1960 on the Agrarian Rules, Law No. 11/1967 on Mining Rules, Law No. 5/1990 on the Conservation of Natural Resources and Ecosystems, Law No. 23/1997 on Environmental Management, Law No. 41/1999 on Forestry, Law No. 22/2001 on Oil and Gas, Law No. 27/2003 on Geothermal Energy, Law No. 7/2004 on Water Resources, Law No. 31/2004 on Fishery, Law No. 26/2007 on Spatial Arrangement, Law No. 27/2007 on the Management of Coastal Areas and Small Islands, and Law No.18/2008 on Waste Management. The review team, who comprised Prof. Dr. Maria S. Sumardjono, SH, MCL, MPA, Prof. Dr. Nurhasan Ismail, SH, MSI, Dr. Ir. Ernan Rustiadi, M.Agr and Ir. Abdullah Aman Damai, MSi, observed that there had been no single ministry or agency coordinating the policies of natural resources management.

<sup>4</sup> East Asia Analytical Unit, 2001, *Indonesia: Facing the Challenge*.

## RECENT POSITIVE REFORMS

A number of positive regulatory reforms dealing both with economic policies and legal procedures have been advanced over the last six years.

**Economic Regulatory Reforms.** A series of annual economic policy packages (through Presidential Instructions, INPRES) have been implemented since 2003. The first package facilitated Indonesia's transition from the International Monetary Fund Extended Fund Facility program, focusing on strengthening macro-economic stability, restructuring the financial sector and increasing investment and export. Subsequent packages, especially INPRES 5 of 2008, have significantly broadened the areas covered to include:

- Improving the investment climate;
- Enhancing financial system stability;
- Strengthening banking institutions and development, including sharia banking initiatives;
- Facilitating the development of the capital market and non-bank financial institutions;
- Accelerating infrastructure development, including through public-private partnership schemes;
- Measures related to the Government of Indonesia's commitment to the ASEAN (Association of Southeast Asian Nations) Economic Community, including the development of the Indonesian National Single Window (NSW) portal to facilitate export-import activities;<sup>5</sup>
- Tax administration reform;
- Improving the performance of state-owned enterprises;
- Empowering small business;
- Strengthening anti-money laundering measures;
- Improving agriculture, the environment and natural resources; and,
- Measures related to manpower and transmigration.

Hundreds of policies and practical measures have been implemented over the last six years through these INPRES, generating scores of new laws and regulations. Reforming the investment climate, in particular, has focused on the establishment of a new investment law (Law No. 25 of 2007) and its implementing regulations, which include revisions to the negative investment list, special economic zones (SEZs), one-stop service schemes, investment incentives and e-investment channels. An inter-ministerial National Team for the Development of Exports and Investments (TimNas PEPI) was established through Presidential Decree No. 3 of 2006 to formulate the necessary policies and implementing measures for investment and regulatory reform.

Several additional government initiatives related to regulatory reform in Indonesia include:<sup>6</sup>

- The Trade Research and Development Agency (TREDA) of the Ministry of Trade is currently mapping and reviewing regulations affecting the operation and development of firms in fourteen sectors considered to be creative industries. The purpose is to identify regulatory constraints and to develop policies to facilitate the industry.

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<sup>5</sup> The NSW system is a central IT portal that integrates information related to the processing of customs documents and import-export licenses so as to facilitate the smooth flow of export, import and transit goods. The NSW portal will eventually connect to the ASEAN Single Window (ASW) System to facilitate data exchange and access among the ten ASEAN economies.

<sup>6</sup> This is a representative but surely incomplete list of the types of regulatory reform activities that are taking place; there is no comprehensive list of such activities published by either public or private sources.

- The Ministry of Communication and Informatics (DEPKOMINFO) is drafting a Law on Communication and Informatics Convergence that is targeted to replace four existing laws, namely Law No. 36/1999 on Telecommunication, Law No. 11/2008 on Electronic Information and Transactions, Law No. 32/2002 on Broadcasting and Law No. 14/2008 on Public Information Openness. The draft law is expected to reduce regulatory confusion, facilitate investment and encourage Indonesian firms (including those in the creative industry) and citizens to take advantage of new information and communication technologies.
- Much attention has focused on managing the proliferation of local regulations following Indonesia's decisive shift to decentralization in 1999 (Laws No. 22 and 29 of 1999). Various efforts have been made to address perceived constraints to business operations and investments created by the ever growing number of local regulations, including:
  - Since 2001, the Ministry of Home Affairs (MoHA) in conjunction with the Ministry of Finance (MoF) have evaluated local government regulations and draft regulations (pertaining to taxes and retributions) and recommended actions to revoke those regulations that were inconsistent with higher-level regulations and considered to inhibit investment. Some 8,000 local regulations (Perdas) have been reviewed; 3,000 identified as problematic; and by July 2009, MoHA had revoked 1,152 local regulations on local taxes and retributions.<sup>7</sup>
  - The State Ministry of Cooperatives and Small/Medium Enterprises has coordinated efforts to review local regulations that may inhibit the development of small business and cooperatives. In May 2009, it reported it had obtained agreement from MoHA for the revocation of 47 out of 142 local regulations identified as constraints to the development of cooperatives.<sup>8</sup>
  - Ad hoc efforts have been made to improve the quality of local regulations, largely self-generated by local governments attempting to improve their regulatory environment. For example, regulatory impact assessments (RIAs) on the impact of various local regulations have been conducted. Typically these have been supported by donors (e.g., The Asia Foundation, GTZ and UNDP) and have been carried out by experts from local universities and/or NGOs. RIA manuals, training and consultative groups have been created. The Committee for the Monitoring of Regional Autonomy Implementation (KPPOD), with the support from various donors such as the European Union, has also organized a regulatory assessment program. It has gathered over 7,000 local regulations in a database, analyzed many of these, and facilitated their amendments or revocations.
- As part of its 2007-11 National Strategy (and in line with the 2006 Law on Population Administration), the National Committee for the Prevention and Eradication of Money Laundering Crimes has targeted the adoption of a single identity number (SIN) system in the country, with Ministry of Home Affairs and the Agency of Assessment and Application of Technology (BPPT) currently piloting the system in four Indonesian cities. Indonesia's messy citizens administration system has been widely blamed for difficulties encountered by the banking system and non-bank financial institutions (particularly insurance firms) that require identity verification, including for anti-money laundering purposes. The wide circulation of fake IDs has also reduced the effectiveness of law enforcement in general, as well as immigration, election processes, the cash-for-the-poor program (BLT) and anti-terrorism measures.
- The USAID-funded SENADA project, in cooperation with BAPPENAS, has created a regulatory mapping and review tool (RegMAP), which has been applied to map, inventory and analyze more than 1,000 regulations affecting five targeted industry sectors operating in Java – auto parts, garments, footwear, furniture and home

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<sup>7</sup> MoHA, 2009, Analisis dan Proyeksi Strategis Nasional 2009.

<sup>8</sup> *Bisnis Indonesia*, May 18, 2009.

accessories. The tool used a filtering process based on regulatory best practice criteria to prioritize those regulations that are considered most problematic for businesses operating in the five targeted value chains, identifying 136 “most burdensome” regulations – a mix of national and local regulations.

Key findings from the RegMAP process as applied to the five sectors include:

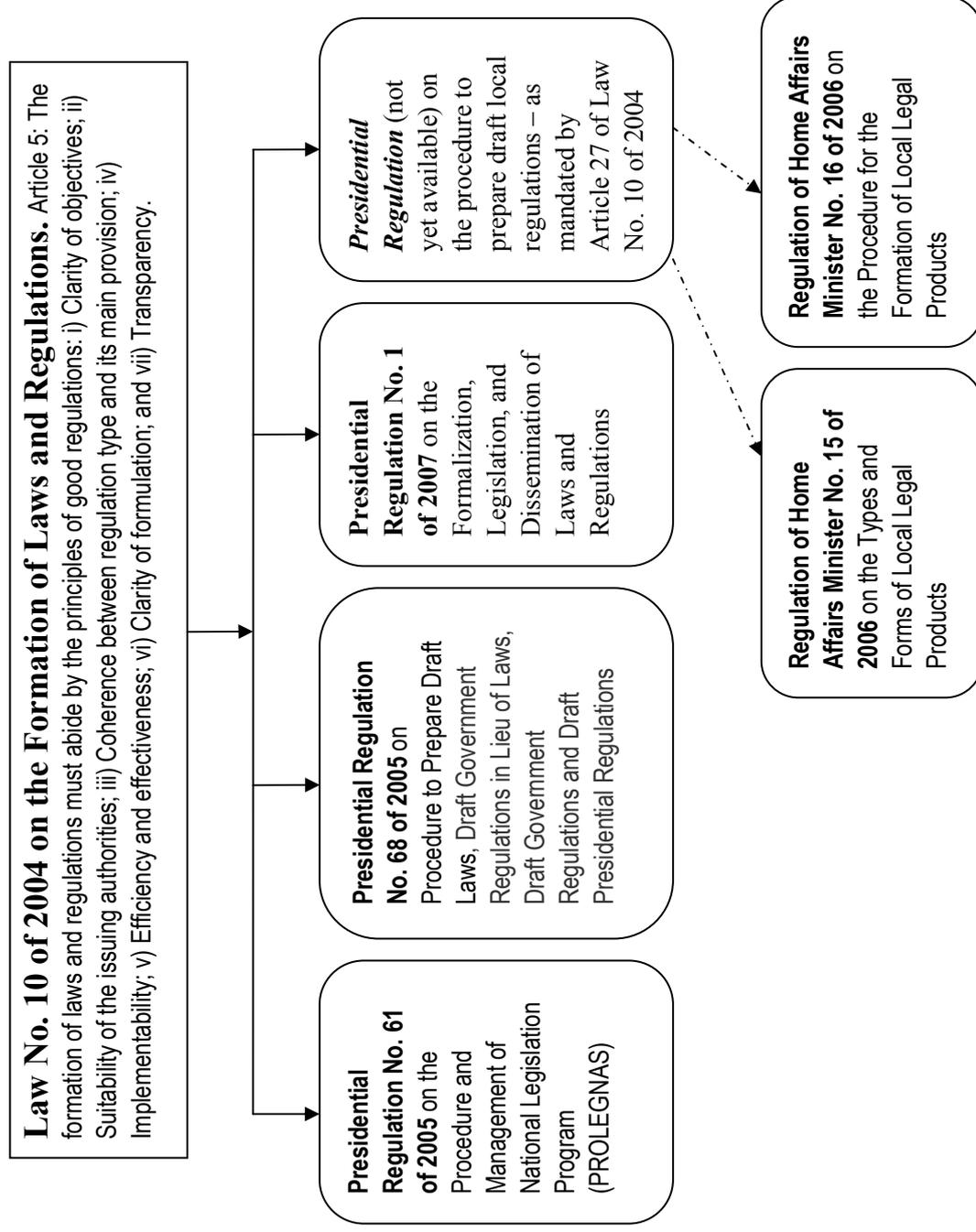
- Regulations tend to be unnecessarily long and complex, especially licensing and permit processes;
- Renewals for permits are often unnecessary and, when needed, are applied too frequently;
- Stated objectives for regulations are inconsistent with their actual content;
- Regulations tend to over-regulate compared to best-practice criteria of minimum effective regulations; in some cases regulations are not required at all, and in others they impose unnecessarily costly compliance burdens on businesses;
- Enforcing regulations often allows too much discretion for officials, creating opportunities for corruption and higher regulatory burden;
- Some regulations compel private companies to use facilities of regulated State Owned Enterprise (SOE) monopolies, limiting competition and increasing costs; and,
- Many regulations affect several or all value chains, suggesting systematic problems; the number of problematic sector-specific regulations are relatively limited.

Although RegMAP is based on internationally accepted regulatory quality criteria, it has been developed and applied in an Indonesian context. It has benefited from the lessons learned from more than a year of application throughout Java and has been developed into an e-learning tool on CD that is available from USAID and BAPPENAS (also from [www.regmap.org](http://www.regmap.org)). This tool has a range of flexible applications according to the problem at hand – including two versions: RegMAP Brief (also called MAPP – Regulatory Analysis Model) and RegMAP Comprehensive (see Annex 1 for the list of regulatory statements and criteria used by both versions).

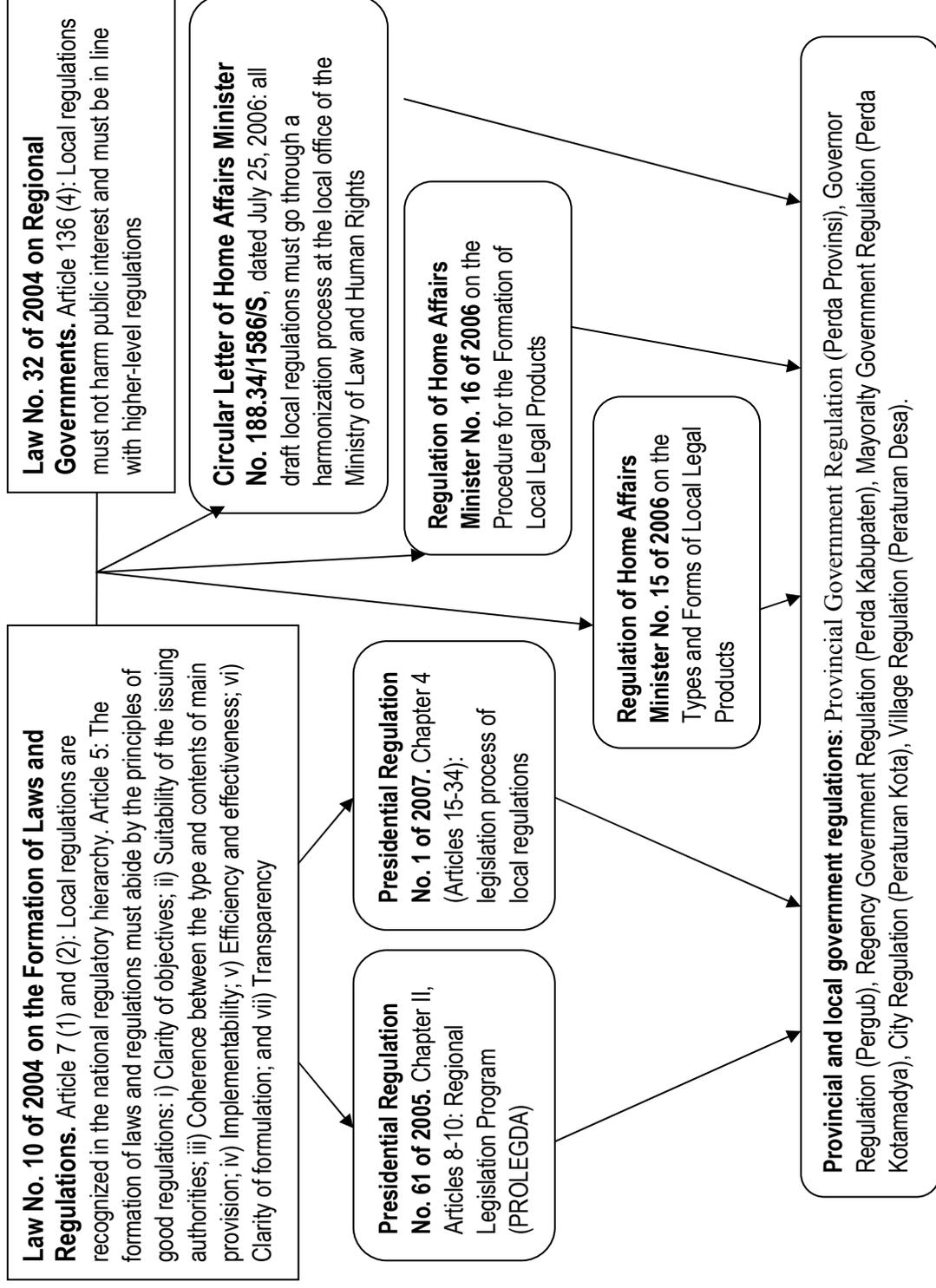
The Brief version of RegMAP applies three general regulatory statements – regarding the legal basis, importance/need and implementation – with ten supporting criteria and is aimed to provide a quick filter that could be applied on large databases of relatively minor regulations. The Comprehensive version includes ten regulatory quality statements with over twenty criteria that delve more deeply into the legality, purpose, clarity, possibility of alternatives, unintended consequences, compliance burden and costs and benefits of a regulation. The Comprehensive version comes closer to a full RIA and is costlier to apply, but it provides a more robust analysis of regulatory quality. For the statements/criteria used in each version of the tool, there are further explanations provided in the e-learning tool to help users conduct the regulatory review, while an automated scoring mechanism provides an indication of the overall quality of the regulation.

**Legal Regulatory Reforms.** In line with the major political developments that have evolved in Indonesia over the last ten years, a number of important reforms in legal and legislative process affecting regulations have been implemented. The establishment of Law No. 10/2004 on the Formation of Laws and Regulations, which represents Indonesia’s “law on laws,” eliminated several outdated regulations (some from the Dutch era) and has provided high-level principles to guide the formulation of laws and regulations in Indonesia. These principles include clarity of policy objective, legal authority of the issuing agency, coherence between the type of regulation and its main provision, implementability, effectiveness, and transparency/openness. As shaped by various new laws, Diagrams 1 and 2 outline the legal basis for the formation of laws and regulations in Indonesia, both at the national and regional levels.

## DIAGRAM 1: FORMATION OF LAWS AND REGULATIONS AT THE NATIONAL LEVEL



## DIAGRAM 2: FORMATION OF PROVINCIAL AND LOCAL GOVERNMENT REGULATIONS



Significant efforts have also been directed at clarifying and fine-tuning the relationship between the central government and local governments in the wake of decentralization in 1999. Law No. 22 of 2004 on Local Governments clarifies the terms of the legal status of local governments and their authority and limitations in establishing local regulations, as well as the power of the central government to cancel certain local regulations. The law also removed executive power previously bestowed to local parliaments. In addition, Law No. 10 of 2004 recognizes the legality of local regulations (Perdas) in the national regulatory hierarchy.

An enhanced process to “harmonize” draft laws and regulations has been initiated, with the aim of introducing stakeholder and inter-ministerial consultation into the drafting process to reduce potential future conflicts and to improve the effectiveness of new laws and regulations. At the national level, the Directorate of Law and Regulatory Harmonization, Ministry of Law and Human Rights (MoLHR), leads this process. This is an evolving process, but apparently it operates mainly among legal functional units in the government based primarily on legal certainty criteria, with relatively limited input related to compliance burden and economic costs, for example, and from other disciplines including economic analysis.<sup>9</sup> With support from UNDP, a harmonization manual is being developed, which could provide a good opportunity to systematize the importance of multi-disciplinary stakeholder consultations and including a wider range of important regulatory quality criteria in the review of draft regulations.

In a national seminar on July 30, 2009, the Directorate of the Analysis of Laws and Regulations (DAPP) in BAPPENAS announced a new systematic initiative to inventory and simplify laws and regulations at the national and local levels.<sup>10</sup> This program will be linked to an upgrading of the importance of regulatory reform and legal certainty in the National and Regional Medium-Term Development Plans (RPJMN and RPJMD) 2010-14 and the associated annual Government Work Plans (RKPN and RKPD). The proposed approach will assign legal bureaus among ministries and local governments to form teams to catalogue and review all laws and regulations, with the aim of identifying problematic instruments that are hampering the achievement of development priorities. The review process will be augmented with stakeholder consultations to develop actionable recommendations to revise, merge or revoke problematic laws and regulations. This process will require close cooperation with MoHA, MoLHR, and legal departments throughout the government. It is planned that specific government budgetary allocations will be provided, supported by a socialization campaign and supporting training. DAPP has adapted the RegMAP Brief tool to create a MAPP process that can be used by the various legal departments to guide the review and recommendation phases.

While there are many details in the plan that will have to be worked out, this initiative represents the most systematic regulatory reform program proposed in Indonesia to date.

## **GAPS IN REGULATORY REFORM**

Based on discussions with a range of Indonesian experts, including several meetings in BAPPENAS, a number of problems with Indonesia’s current regulatory system have been identified, including but not limited to:

- Indonesia has a bureaucratic culture that tends to create and preserve complexities;
- Regional devolution, with the number of new municipalities and provinces continuing to grow to date, has increased the complexity of the regulatory environment;
- There is no effective guidance available to help ensure the quality of regulations;

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<sup>9</sup> Circular Letter of Home Affairs Minister No. 188.34/1586/S, dated July 25, 2006, stipulates that all draft local regulations must go through a harmonization process at the local office of the Ministry of Law and Human Rights.

<sup>10</sup> USAID-SENADA co-organized this seminar.

- There is a large accumulation of cluttered regulations, without an adequate inventory, creating a high degree of confusion, uncertainty and inefficiency;
- In most cases there is weak coordination between government agencies, and in some cases there is competition or conflict regarding the authorities and tasks among agencies, resulting in the encroachment of each other's tupoksi (organization's main task);
- There is often limited if any consultation and coordination among various functional units within the government, even within the same agency (e.g., the legal and economics departments), which can be further generalized to limited multi-disciplinary cooperation between, for example, lawyers and economists;
- Processes for reviewing draft laws and regulations do not have strong requirements that robust regulatory-quality be applied, particularly requiring assessment of the compliance burden and potential economic efficiency costs of proposed legislation, and the legal departments responsible for such review typically are not well trained in business/economic cost-benefit analysis; and,
- The effective implementation of laws and regulations are limited by weak administrative, judicial and law enforcement, so that even well-designed regulations may not effectively deliver the intended benefits.

There is no systematic analysis of the negative or positive effects of regulations in Indonesia. Anecdotal evidence indicates that the series of economic policy packages undertaken since 2003 have produced mixed results. After the passage of the new Investment Law, investment has not markedly increased, nor have complaints diminished or competitiveness indicators improved. Since it took some time to develop implementing regulations for the investment law, benefits may accrue over time. And, while the Investment Law should improve business permit processes and provide equal treatment of foreign investors, it will have limited impact on a range of other factors affecting business operations (e.g., construction, energy use, security, hiring and firing workers, local licenses, contractual enforcement, etc.), much of which has remained relatively unchanged. PEPI, which has focused most of its attention on implementing regulations for the Investment Law, is just beginning to research and develop a strategy for reducing business licensing and other regulatory constraints for business.

From the legal perspective, many of the reform measures have involved "patch and mend" efforts to deal with weaknesses and incompleteness of the regulatory system and existing regulations. For example, Regulations 15 and 16 (2008) of the Home Affairs Minister (Permendagri) on the Types and Forms of Local Legal Products (i.e., regulations) and on the Procedure for the Formation of Local Legal Products, respectively, have been used to fill a legal gap caused by the absence of a presidential regulation on the subject matter (see Diagrams 1 and 2). Based on discussions, it appears that legal departments and thus final authorizers of regulations rarely, if ever, include robust regulatory quality criteria in the evaluation of draft regulations, especially rarely including compliance burden or economic efficiency criteria. There remains ambiguity regarding the authority of local governments to promulgate regulations and the requirement for provincial and central government review.

Policy, legal and procedural gaps remain throughout the regulatory system. As mentioned above, for example, although Law No. 10 of 2004 has provided general guidance for the formation of all laws and regulations in Indonesia, the high-level principles mandated by this law to ensure the quality of draft laws and regulations have not been reinforced by key implementing regulations. As a result, there is no clear, pragmatic, functional guidance for the rigorous review of draft regulations, nor for monitoring the effectiveness of how regulations are enforced once in effect.

An important deficiency is the limited information provided to policy makers when developing and approving new regulations, and monitoring the enforcement of regulations over time. In most cases, a clear report on the needs and justification for a new regulation, and an evaluation of its economic and social impact, is not included for review by stakeholders nor policy makers. In the implementation of Law No. 10 of 2004, Presidential Regulation No. 68 of 2005 states the need, but does not mandate, the use of an academic paper to accompany draft laws (the use of academic papers for implementing regulations appears to be even less clear). Regulation No. M.HH-01.PP.01.01 by the Minister of Law and Human Rights (MoLHR) of 2008 provides guidance on the academic papers. Importantly, neither of these two regulations make a reference to the high-level regulatory principles specified in Law No. 10 of 2004, which were established to ensure higher-quality regulations. Guidance for academic papers is quite general, noting the need to assess the philosophical, sociological and judicial bases of a draft law, which tends to neglect economic considerations. In our discussions, no expert reported that academic papers were effectively employed in the drafting process, in those limited cases where they were even prepared.

There appear to be limitations in the effectiveness of the harmonization process for draft laws, including:

- There are too many laws and regulations requiring harmonization relative to the number of available skilled staff in the MoLHR to coordinate the process.
- Draft laws and regulations put forward for harmonization have not been adequately reviewed and consulted on by all relevant stakeholders, which is difficult to rectify late in the drafting process.
- Harmonization calls for representatives from various public and private stakeholder institutions (government and private) to attend a series of meetings and discussions, but often participants differ each meeting, making it difficult to develop a consistent and constructive dialogue.
- Many of the academic papers accompanying draft laws are of poor quality and are therefore not useful in facilitating the harmonization process.
- All the MoLHR staff coordinating the harmonization process, and most of the discussion participants, are lawyers, whereas the process itself requires multi-disciplinary and multi-interest inputs – as a result, compliance burden and economic inefficiency costs, among other things, are often not included adequately in the process.

Thus, fundamental elements of widely-accepted regulatory best practice are not legally required to be considered as draft regulations are reviewed or existing regulations are monitored. Missing are checks to assure that every regulation meets fundamental attributes of effective regulation. In most cases, regulations – whether in draft form or after coming into effect – are not tested: a) to determine whether the mechanisms of a regulation effectively and efficiently achieve the regulation’s social objective; b) whether alternative versions could be more effective and unintended consequences avoided; c) whether environmental considerations are important; d) whether compliance burdens have been minimized; and critically, d) whether the overall social benefits of the regulation exceeds its costs. As a result, the system for developing and monitoring regulations in Indonesia does not take into account the full national interest; creating opportunities, and in fact the likelihood, that the implementation of regulations will be less effective and more burdensome than should be the case.

Reflecting weaknesses in the drafting process for new laws and regulations, judicial review by the Indonesian Constitutional Court (MK) and Supreme Court (MA) were conducted on 31 such laws in 2008, up from 26 in 2007, but down from 45 in 2006 (see Table 1).

**TABLE 1: PROBLEMATIC LAWS (JUDICIAL REVIEWS REQUESTED)**

	Year	Number of Judicial Reviews	Granted	Rejected	Requests Declined	Requests Withdrawn
<b>MK (Constitutional Court)</b>	2005	25	7	9	8	1
	2006	27	7	9	10	1
	2007	20	3	8	4	5
	2008	29	7	12	6	4
<b>MA (Supreme Court)</b>	2005	0	0	0	0	0
	2006	18	2	16	0	0
	2007	6	1	5	0	0
	2008	2	0	2	0	0

Source: BAPPENAS

Some of the constraints to regulatory reform result because of the political fragmentation and functional “stovepiping” (what is often called “ego-centricity”) that seems to occur naturally within the current system. There are various political forces supporting regulatory reform. Whereas all of these forces should work together to provide broad-based support for a national regulatory reform effort, in practice, political will is fragmented and institutional functions are often stovepiped among ego-centric approaches. This has tended to dissipate political will and development of a more effective regulatory system in Indonesia.

For example, in Indonesia, while business leaders and economists promote the importance of streamlining and rationalizing regulations to reduce the high-cost economy and to increase competitiveness, legal experts and the law and legislative departments throughout government focus on legal certainty. Proponents of anti-corruption initiatives have tended to focus on increasing the likelihood of penalties for offenders, and less so on reducing opportunities for corrupt activities by developing a more streamlined and accountable regulatory system that limits discretion and unnecessary approval/inspection processes. Advocates of bureaucratic and administrative reform conduct structural and organization reviews, with less attention on how the regulatory functions of government can be streamlined in order to operate more efficiently and responsively to public needs.

Institutional stove-piping or ego-centricity among functional units and disciplines is most revealing at the Coordinating Ministry level, where strategy for regulatory reform to improve competitiveness is developed under the leadership of the Coordinating Minister for Economic Affairs, while the push for regulatory reform to achieve legal certainty is developed under the leadership of the Coordinating Minister for Political, Legal and Security Affairs. Rarely are these two important objectives integrated and coordinated. At the operational level, legal and economic departments rarely cooperate closely in the review and improvement of draft regulations. Segmentation of responsibilities and disciplines permeates all levels of government. The result is a lack of coordinated effort and the fragmentation of political will to improve the regulatory environment systematically and in practice, which, after all, is what really matters to businesses, workers, farmers and other citizens.

# CHAPTER THREE – WHAT CAN BE LEARNED FROM OTHER COUNTRIES?

Over the last fifteen years, many governments and international organizations have increasingly focused on advancing higher-quality domestic regulations and administrative procedures. This has occurred partly in response to international negotiations that have lowered international barriers to trade and investment, and partly in response to pressure to improve domestic growth and governance dynamics, including deregulation initiatives of government intervention in a number of sectors (e.g., airlines and banking).<sup>11</sup> Particularly in developing countries, pressure for regulatory reform comes from demands by businesses and citizens to improve public services and the administration of state policy in practical, day-to-day terms.

The Organisation for Economic Co-Operation and Development (OECD), Asia-Pacific Economic Cooperation (APEC) and an array of non-government experts such as Jacobs & Associates have developed and refined a set of international best practice approaches to high-quality regulation.<sup>12</sup> These reports: a) define, organize and analyze key elements of the regulatory reform challenge; b) provide checklists and analytical tools/approaches for advancing higher-quality regulation; and c) present case studies of experiences in many countries, both developed and increasingly developing. Their efforts have created a valuable international knowledge base and global learning dynamic with useful insights into all stages of regulatory reform.

In this chapter, to provide perspectives that may be of value to Indonesian regulatory reform, we review the best practices reported from benchmark OECD and APEC reports, and go more deeply into the practical experiences of two developing countries – Vietnam and Egypt – that are implementing aggressive regulatory reform programs. We present these two countries because, like Indonesia, they also faced for decades what many considered to be the impossible task of streamlining and modernizing state administration capabilities that were widely perceived to cause high business operating costs, numerous hassles for the day-to-day living of citizens, and a culture of corruption.

## OECD REGULATORY BEST PRACTICE PRINCIPLES AND GUIDELINES

The OECD (1995, 2005 and 2009) and the OECD-APEC (2006) have developed checklists of effective regulatory systems that, in effect, have come to represent international regulatory best practice. These checklists have been endorsed by the member countries of each organization and have benefited from insights and feedback not only from government officials but also from non-government stakeholders and researchers. The OECD-APEC Report provides several key definitions:

*Regulatory reform refers to changes that improve regulatory quality to enhance economic performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform can mean revision to a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform. Deregulation is a subset of regulatory reform and refers to*

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<sup>11</sup> Response to the recent global financial crisis, which has been widely attributed to lax regulation in financial sectors, has generated a re-questioning of the characteristics and benefits of deregulation, especially for sectors such as finance that are susceptible to systematic failure and a “too big to fail” syndrome.

<sup>12</sup> See OECD (1995), (1997), (2005) and (2008); OECD-APEC (2005); and Jacobs (2006). This is just a small sample of the many useful pieces of research on regulatory reform conducted over the last fifteen years.

*complete or partial elimination of regulation in a sector to improve economic performance. Regulatory, competition and market openness policies are key drivers for a successful and coherent regulatory reform. (page 4)*

*Regulatory policies are designed to maximize the efficiency, transparency, and accountability of regulations based on an integrated rule-making approach and the application of regulatory tools and institutions. (page 14)*

The initial 1995 OECD Reference Checklist for Regulatory Decision-Making consisted of the following ten questions:

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits justify the costs?
7. Is the distribution of efforts across society transparent?
8. Is the regulation clear, consistent, comprehensible and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

In 2005, this checklist evolved into seven OECD Guiding Principles for Regulatory Quality and Performance, as follows:

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Key elements of successful regulatory policy are also reported in the 2006 OECD-APEC Report,<sup>13</sup> as follows:

1. To what extent are capacities created that ensure consistent and coherent application of principles of quality regulation?
- 2/3. Are the legal basis and the economic and social impacts of drafts of new regulations and existing regulations reviewed (... [based on what] performance measurements...)?
4. To what extent are rules, regulatory institutions, and the regulatory management process itself transparent, clear and predictable to users both inside and outside of government?
5. Are there effective public consultation mechanisms and procedures including prior notification open to regulated parties and others ...
6. To what extent are clear and transparent methodologies and criteria used to analyze the regulatory impact when developing new regulations and reviewing existing regulations?
7. How are alternatives to regulation accessed?
8. To what extent have measures been taken to assure compliance with and enforcement of regulations?

OECD (2009) in “Guidance for Policy Makers: Overcoming Barriers to Administrative Simplification Strategies” outline twenty-two “Points for Success.” The strategies highlight the need: for a comprehensive, “whole-of-government” approach (relative to piecemeal actions); for good public communication; for training initiatives and the deployment of multi-disciplinary teams; and, to adapt the international experiences to a country’s own context.

While international agreements have been developed on how best to promote high-quality regulation, each country must adapt these guidelines and insights to their own particularly circumstances. Next, we evaluate in some detail how two developing countries – Vietnam and Egypt – have adapted international learning to develop their own aggressive regulatory reform efforts. Although every country is different, and one size never fits all, both Vietnam and Egypt have relevant similarities to Indonesia and can provide useful, pragmatic insights into how developing countries are seriously and hopefully sustainably upgrading and modernizing their systems of regulation and administrative procedures.

## **VIETNAM’S RECENT REGULATORY AND ADMINISTRATIVE REFORM INITIATIVES**

Vietnam is currently implementing a comprehensive regulatory and administrative procedure reform program. We present Vietnam’s experiences not as a prototype for Indonesia to adopt, but as examples to shed light on various practical implications of conducting a systematic reform effort. Clearly “one size does not fit all,” but at the same time, learning from the successes and failures of others can help any country avoid mistakes and to develop more quickly approaches that can work best in their own circumstances.<sup>14</sup>

**Why is Vietnam Reforming Its Regulatory Policies and Administrative Procedures?** From 2000 to 2007, using implementation of the US-Vietnam Bilateral Trade Agreement and accession to the World Trade

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<sup>13</sup> The OECD-APEC Report (2006) produced four integrated checklists: i) Checklist for Integrated Policies (Horizontal Dimension); ii) Checklist for Regulatory Policy; iii) Checklist for Competition Policy; and, iv) Checklist for Market Openness Policies.

<sup>14</sup> Although Vietnam’s and Indonesia’s political systems differ, and Indonesia is a much larger and more culturally-diverse country than Vietnam, as a sister ASEAN member at a lower level of per capita income than Indonesia that is nevertheless increasingly becoming a major economic competitor, Vietnam’s legal, social and economic systems have a number of relevant commonalities with Indonesia.

Organization as a catalyst, Vietnam comprehensively modernized its legal framework for commercial activity and judicial procedure. More than 100 national laws and regulations were revised or developed anew – filling major policy/legal gaps and other inadequacies remaining from its outdated colonial and Soviet legacy. These extensive reforms brought Vietnam’s legal system much more in line with international best practice.<sup>15</sup>

The results have been dramatic – since 2000, Vietnam’s economy has grown around 7 percent a year with steadily declining poverty levels, spurred by rapidly expanding foreign trade and investment and robust growth in Vietnam’s private sector and domestic investment. Even with the recent global collapse in trade, Vietnam is expected to grow on average around 5 percent per year from 2008 to 2010, much like Indonesia and China, and unlike its other ASEAN neighbors.<sup>16</sup>

Even after such extensive reform, however, there continued to be many complaints by businesses and private citizens that Vietnam’s state administrative systems remained outdated, ineffective, and in too many cases, counterproductive and corrupt. Vietnam’s new laws and regulations just didn’t seem to improve the day-to-day experiences of citizens and businesses as much as had been expected with advances in the “letter of the law.” Focus increased on how the laws and regulations were implemented in practice – its administrative procedures and bureaucratic traditions.

Going far beyond the formal requirements of its trade agreements, Vietnam initiated an ambitious, comprehensive regulatory and administrative reform program in 2008, a year after WTO accession. Operationally, Vietnam’s systematic reform program has two complementary components:<sup>17</sup>

- **Project 30:** A Prime Minister-led effort to simplify Vietnam’s system of national and local administrative procedures (essentially low-level guidance on enforcing regulations and other state mandates by national ministries, provincial People’s Committees, and local districts and communes); and,
- **Revision to the Law on Laws:** A National Assembly-approved revision in the legal process for drafting and approving new laws, ordinances and decrees by the National Assembly and the Prime Minister (essentially higher-level regulatory policy) that will require the application of a regulatory impact assessment and a 60-day public comment period on all relevant draft documents.<sup>18</sup>

Effectively, this approach sequenced a rapid reform effort from 2008 to 2010 on existing administrative procedures, which have never been evaluated systematically and are perceived to be the most troublesome current problem, while phasing in over time through the revision of the Law on Laws the more rigorous RIA and 60-day public comment review of regulatory policy in the form of higher-level laws, ordinances and decrees. Applying RIAs on major regulatory policies, then, will occur every five years or so as Vietnam’s National Assembly develops new laws and typically reviews and/or revises its existing laws and authorities for Government to develop implementing regulations over the course of normal legislative activity (the NA and cabinet have five-year terms). To plug the last hole, as part of the administrative reform effort, a new department will be created to review the

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<sup>15</sup> See USAID-STAR (2007) and (2008).

<sup>16</sup> Unlike Indonesia, Vietnam’s economy is highly dependent on trade. By comparison for 2007, the ratio of merchandise trade to GDP in Vietnam was 160 percent versus 49 percent in Indonesia. Nevertheless, even with the collapse in trade, recent forecasts predict that Vietnam will grow faster than Indonesia by at least one percentage point in 2009 and 2010 (Noumura, Fitch 2009).

<sup>17</sup> In addition to Project 30 and the Law on Laws, there is a rapidly improving process for businesses and private citizens to appeal and complain against government administrative decisions, including the ultimate right to appeal a complaint to what, in principle, should be an independent and effective judicial court.

<sup>18</sup> High-level regulations include laws and ordinances promulgated by the National Assembly and decrees and other legal normative documents issued by the Prime Minister. It does not include ministerial circulars and decisions, nor legal normative documents issued by provincial and local governments.

development and implementation of new, “low-level” administrative procedures at the national and local levels that are not covered by the new Law on Laws revisions.

This approach also makes an important tactical decision on the cost efficiency of using different levels of analytical rigor to review different types of regulations and procedures. Since it is costly in terms of time, resources and skilled staff to carry out an RIA, Vietnam decided that RIA’s would be applied only to high-level regulatory policies – those included as laws and ordinances passed by the National Assembly and decrees issued by the Prime Minister as the head of the Government. For these policies that tend to be more technically complex and more far-reaching in impact, the investment in a more in-depth analysis of the costs and benefits and related regulatory quality is cost efficient and politically merited. On the other hand, for administrative procedures for ministries and local governments, which tend to be less complex and more narrow in impact, a more simple impact assessment (RIA-lite) with questions on legality, necessity and reasonableness (ease of compliance and market friendliness) using qualitative assessments will be employed. This is not to lessen, however, the importance of improving lower-level regulations, since in many cases, these instruments provide some of the most important regulatory requirements for how businesses operate and citizens comply.

**Project 30 – A Rapid, Comprehensive Administrative Procedure Reform Program.**<sup>19</sup> Project 30 is a comprehensive program applied from 2008 to 2010 to improve the effectiveness of all existing and future national and local administrative procedures, which are the rules and practices by which government officials implement state policy. Project 30 focuses on what is currently considered to be the most troublesome red-tape and regulatory burdens that occur in the day-to-day experiences of businesses and citizens; that is, “low-level,” bureaucratic administrative procedures and practices used to implement higher-level laws and regulations.<sup>20</sup>

Project 30 – the Master Plan of Administrative Procedure Simplification – has a two-pronged approach to be completed by the end of 2010:

- Conduct a rapid, transparent, comprehensive inventory, review and simplification of all **existing** national and local administrative procedures, creating and maintaining a national database on administrative procedures;<sup>21</sup> and,
- To sustain the reforms over time, promulgate a decree that creates the authority and institutional capacity/procedures for a new division in the Office of the Government to review/control the development of **new** administrative procedures at all levels of government.

The Prime Minister has legally mandated Project 30 to achieve an integrated set of national development goals that include political, legal, governance, and economic objectives. It aims to develop administrative procedures that:

- are more predictable, easier and less costly to comply with, and that reduce the space for corruption;
- improve public service delivery;

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<sup>19</sup> For a detailed and updated report on Project 30, see the webpage: <http://www.thutuchanhchinh.vn/en>.

<sup>20</sup> For example, although national regulations provide guidelines for advertising products, in practice, an advertiser must get separate approvals from each province to advertise their product in that area. This web of local procedures makes it prohibitively costly for a Vietnamese or foreign firm to mount a national advertisement campaign, in effect stifling the intent of the national law. As another example, not only do administrative procedures for implementing national laws and regulations often differ among provinces, but even within provinces, individual districts and local communes can have separate administrative procedures to implement provincial regulations, which further increases costly paperwork for those who must comply with the regulation and raises the possibility (likelihood) that regulations are applied differentially and possibly inconsistently across local areas. Out of the 62,000 administrative procedures collected to date, nearly 90 percent are from provincial and local levels, illustrating the severity of the problem of cascading regulatory procedures among different levels of government, and the fundamental difficulty of applying national policies uniformly throughout Vietnam, even given Vietnam’s unitary government structure.

<sup>21</sup> It may be the case that an existing administrative procedure should be strengthened. For example, it is suspected that many administrative procedures do not have a legal basis, which would require revocation because they are illegal. However, it may be recommended that a currently illegal administrative procedure is necessary and effectively implemented – the recommendation then would be to strengthen the procedure by promulgating it officially in a legal normative document.

- improve competitiveness with higher investment and jobs;
- create trust between the private and public sector; and
- strengthen the effectiveness, professionalism, and ethical standards of state administration.<sup>22</sup>

Furthermore, the Government has included regulatory reform to increase competitiveness and productivity as one of eight key elements of their anti-recession policy package.

Project 30's mission statement calls for it to achieve the following results in three phases with established deadlines:

- Phase 1: Inventory all administrative procedures and forms by all levels of government (commenced in October 2008 for completion by the end of July 2009);
- Phase 2: Review every administrative procedure and form against clear, standardized criteria to determine legality, necessity and reasonableness;
- Make concrete recommendations needed to simplify or eliminate illegal, unnecessary and unreasonable administrative procedures (Phase 2 commenced in August 2009 to be completed by the end of April 2010);
- Phase 3: Submit recommendations to competent authorities for their consideration and decision to carry out recommendations for reform (commence in May 2010 and finish by the end of 2010); and,
- Publish and maintain a complete national database of administrative procedures (complete by the end of 2010).

To implement Project 30, a Prime Minister decision in 2008 established a Special Task Force (STF) chaired by the Office of the Government to lead the Project and 87 Task Forces (TFs) made up of 24 ministerial TFs and 63 TFs for each province and city to organize and manage inputs from technical staff among ministries and local governments to carry out the inventory, review and recommendation phases. The STF runs independently and reports directly to the Prime Minister. It is led by the Office of the Government (OOG) with 20 permanent staff from the OOG and various ministries. It is chaired by the Minister (Chairman) of the OOG, with two senior OOG staff serving as Deputy Chairs who are responsible for managing day-to-day STF work. The OOG serves effectively as the Prime Minister's office, with all ministries and provinces reporting to the OOG. A Secretariat largely of OOG staff is assigned to support the STF.

The Special Task Force plays a number of critical roles. It:

- Provides high-level leadership and coordination among different levels of government;
- Establishes political and bureaucratic accountability;
- Designs the tools and procedures to guide the activities of the Task Forces, and organizes supporting training;
- Works closely with the public-private Advisory Council to facilitate private-sector input at all stages of the process;
- Manages the national database (e-registry) of administrative procedures;
- Provides independent analysis;

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<sup>22</sup> DAI is implementing two USAID-funded projects in Vietnam (the STAR Project and the Vietnam Competitiveness Initiative Project) that have provided lead technical assistance to the Government of Vietnam to support, at every step of the way, their massive legal, economic and governance policy reforms since 2001, including their more recent comprehensive regulatory reform efforts.

- Collects, packages and supports recommendations for reforms for submittal to the Prime Minister, and then monitors the carrying out of reforms by the relevant authorities; and,
- Serves as a focal point for developing strategic recommendations to the Prime Minister and for donor support.

Although the responsibilities of the STF are extensive, its resources and staffing are quite limited. Thus, while the STF provides strategic leadership for Project 30, the primary work done to inventory, review and make recommendations are coordinated by the 87 corresponding Task Forces and actually done by technical staff in the various ministries and local governments. In this way, the STF provides high-level leadership for Project 30, while leveraging inputs by a large number of offices with technical expertise through all levels of government in every province and city in Vietnam.

While technical staff in the ministries and local governments are most likely to have the technical expertise and access to data needed to carry out the inventory, review and recommendations of administrative procedures, they also may have vested interests that could bias their recommendations for reforming certain administrative procedures. To counter this potential bias, Project 30 has built in several checks and balances. One is to facilitate private-sector inputs at every stage of the process (explained in more detail below), and another is to allow the STF to conduct their own analysis and make their own recommendations for reforms, in some cases possibly overriding input from the Task Forces.

The STF has developed three “Forms” to provide clear, standardized guidance to the Task Forces for completing each phase of Project 30:<sup>23</sup>

- **Form 1: Instructions to the Task Forces** to identify and collect all administrative procedures under their authority and input them with a standardized format into the national data base;
- **Form 2: Instructions to the Task Forces** to use regulatory-best-practice criteria to review each administrative procedure under their authority, to make concrete recommendations to revoke, simplify or strengthen each procedure, and to input the analysis and recommendations in a standardized format into the national database;<sup>24</sup>
- **Form 3: Instructions for the private sector** to independently identify, review and recommend changes on any administrative procedures, and to input the analysis and recommendations in a standardized format into the national database.

To date, with all but a few provinces fully responding, the Task Forces have completed Form 1s and submitted around 62,000 “dossiers” of administrative procedures into the national database. Forms 2 and 3 will be distributed soon, and training will be provided to commence the review and recommendation phase starting in August through the TFs in the line ministries and local governments.

Form 2 uses nineteen questions to test the validity of an administrative procedure, as follows:

- **Is the procedure legal** – was the procedure promulgated in accordance with authorized power, is its legal basis current and does it conflict with higher-level regulations?

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<sup>23</sup> Given restrictions in the length of our report, the current versions of Form 2 and Form 2a are provided in Annex 1. Detail on Forms 1, 3a and 3b and related guidelines for each form are available upon request. Although these forms are designed to be as self-explanatory as possible to facilitate the process, with so many actors involved, additional explanatory documents are provided to guide the application of each form, and short-term training is provided where possible.

<sup>24</sup> As noted previously, it is suspected that many administrative procedures do not have a legal basis, which would require revocation because they are illegal. However, it may be determined that a currently illegal administrative procedure is necessary and effectively implemented – the recommendation then would be to strengthen the procedure by promulgating it officially in a legal normative document.

- **Is the procedure necessary** – are the objectives clearly stated, does the procedure inhibit business according to a list of 7 types of compliance burden, and are there better alternatives to achieve the objectives?
- **Is the procedure reasonable** – is the procedure overlapping, inconsistent or contradictory with other regulations, is there a clear definition of the responsible agency, are there clear steps and response deadlines for implementation of the procedure, does it depend on the settlement of other procedures, is it national or local, and are there complaints or comments on the complexity and cost of implementation?

Form 2a uses eleven questions to test the effectiveness of forms used to implement procedures, as follows:

- **Is the form legal** – was the form promulgated in accordance with authorized power, and is its legal basis current?
- **Is the form necessary** – is it in line with state management objectives and if the form did not exist, what difficulties would be faced by citizens and businesses?
- **Is the form reasonable** – is the content easy to understand and implement, is it applied nationally or locally, are forms provided free of charge, and are there complaints or comments on the complexity and troublesomeness of the form?

Forms 2 and 2a require the government reviewer to check “yes” or “no” to the questions, and provide opportunities to explain answers. As such, these answers are qualitative in nature, relying on the judgment of the reviewer. To complete the form, the reviewer is asked whether each procedure and form should be maintained or revoked, and if maintained, should it be simplified. If so, then recommendations for how to simplify are provided. Reviewers provide their name and sign each form, and a controller may be identified as well.

All aspects of Project 30 are leveraged by private-sector participation, providing a second voice, broader perspectives and public accountability to the government-led Special Task Force and Task Forces. An Office of the Government Decision established a public-private Advisory Council of Administrative Procedures Reform (Advisory Council) to represent business, academia and the public in support of the STF. The Advisory Council is made up of 15 experts who volunteer their time, including seven leaders of Vietnamese business organizations and four leaders of foreign business groups. A secretariat is established to support the Advisory Council activities. The Advisory Council reviews the work of the STF and TFs, but in addition has the opportunity to develop their own independent analysis and recommendations for administrative procedure reform.

In addition, Advisory Council members can facilitate Working Groups of private experts to supplement their inputs, each of which would be chaired by a member of the Advisory Committee to assure direct contact with the STF. In particular, working groups of private experts are developing independent analysis and recommendations for reform around clusters of procedures that interact to effect an important business process, for example groups of procedures affecting supply and distribution chains, banking operations, or customs/port clearance.

A separate Form 3, as well, has been developed to encourage private stakeholders to have an independent track to identify and make recommendations to reform specific administrative procedures.

Although not yet operational in practice, the process for approving recommended changes in administrative procedures is expected to operate as follows. Recommendations for changes in administrative procedures accompanied by analytical reviews will be submitted by the TFs to the STF. As well, the STF can do its own analysis and make its own recommendations, and it will collect analytical and recommendations from the private sector (through the Advisory Council and Form 3). The STF will then package a group of evidence-based

recommendations for changes in administrative procedures for the Prime Minister to review and approve.<sup>25</sup> If the PM approves, there will be an expedited process for carrying out the reforms. The approved recommendations will be passed back to the competent authorities to submit draft language to carry out the reforms (if more than one procedure is recommended for reform by a competent authority, then they can be packaged in the form of an omnibus bill for approval in mass). These changes will be expedited for approval and promulgation through required legal processes by competent authorities.

Transparency and public communications are emphasized throughout Project 30. Administrative simplification has been established as a national priority by the Prime Minister, and has been communicated to the public through press releases, speeches, seminars and a national webpage. This, in itself, is a major accomplishment. A national political mandate establishes for all government officials and private actors that Vietnam will aim for high-quality regulatory and administrative standards at all levels of government policy and administration. And through the comprehensive and interactive nature of the reform initiative, it requires that many government officials at all levels get directly involved with improving the system and adopting stronger regulatory criteria for reviewing the validity of existing procedures and the new for future procedures. And, it provides meaningful and user-friendly opportunities for the private-sector to participate in and influence the reform effort. All steps and results of Project 30 are reported on the STF website, and the national data base of administrative procedures will be posted for public review, with search capabilities that will make it easier for the public to understand and track Project 30 results.

A number of practical analytical tools supported by training had to be developed at the beginning of Project 30, and applied over the implementation stages, as follows:

- **Information technology is critical from the beginning** – the inventory, analysis and recommendation phases of Project 30 are extremely data intensive. A large collection of data and reference information must be included in each of more than 62,000 administrative procedure dossiers, and must be entered into a standardized, searchable database that can accommodate all levels of government and the private sector and public from every province in Vietnam. USAID funded the purchase of a well-regarded international e-guillotine software and helped adapt it to conditions in Vietnam, while the Government of Vietnam purchased servers and other hardware.<sup>26</sup> IT experts are needed to localize the design, and then to operate and maintain the system. The STF developed its webpage in Vietnamese and English to provide a public focal point for information on Project 30. ICT capabilities are critical for transparency and technical management of the reform process.
- **Forms 1, 2 and 3: user-friendly, standardized, accountable analytical tools must be developed, and supporting training provided** – the inventory, review and recommendations must be made by all levels of government staff and business representative from throughout Vietnam. As shown above, Forms 1, 2 and 3 provide the key analytical tools to facilitate the collection of an inventory and to review and recommend. These forms are designed to be as self-explanatory as possible. Short-term training is provided for the national ministries in Hanoi and for provincial staff through group training at sites in the north, central and south regions. These types of tools will be applied over time to manage the development of new administrative procedures by the new division in the OOG.

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<sup>25</sup> In order to buttress credibility in Project 30, it will be critical that the first groups of “early-harvest,” evidence-based recommendations to simplify administrative procedures be well presented and important in impact. International experience also shows that it is important to process packages of reforms rather than large numbers of individual reform requests.

<sup>26</sup> Around US\$ 750,000 is likely to be spent directly on IT capabilities to implement Project 30 over a three-year program – including estimated amounts of around US\$ 400,000 on hardware, US\$ 150,000 on licensing an international e-guillotine software, US\$ 50,000 on 24/7 service agreements, and US\$ 100,000 on local IT consulting, training and maintenance. The Government of Vietnam and USAID approximately split the overall funding requirements.

**Strengthening Processes for Developing New Regulations – Revising the Law on Laws.** The second key component of Vietnam’s regulatory reform effort is strengthening the process for developing new regulations and policies. The Law on Laws was revised in 2008 to require that all draft laws, ordinances and decrees be submitted to a regulatory impact assessment, with the RIA, a justification report and the draft regulation posted for a 60-day public comment period.

In line with their functional responsibilities, legal departments throughout the government and National Assembly are required to manage the regulatory impact analysis, led by the Ministry of Justice. RIAs, however, inherently involve many economic and compliance criteria that legal departments have not traditionally included under their responsibility, and for which they do not have trained staff on hand. This, in turn, requires effective coordination between legal and other technical departments in the ministries and National Assembly, and can demand technical skills and data that are not currently available even in the full ministry.

RIAs must only be applied on drafts of high-level regulations as they are proposed, which provides time to develop capacities and complete assessments. To facilitate this process, an RIA Task Force in the Government has been established, and an RIA Compliance Manual is being developed. Government staff are being trained to conduct regulatory impact analysis, but deficiencies in current staff capabilities have led to hiring non-government experts to supplement government staff (funded by USAID and the Government of Vietnam). A problem to date has been limited coordination and complementarities between the RIA-lite tools used by Project 30 and the more rigorous RIAs required by the revised Law on Laws, which has occurred partly because each process is managed by different ministries (the OOG for Project 30, and the Ministry of Justice and the National Assembly for the RIA reviews).

**Adaptive Implementation in the Short-Term; Investing in Transformative Capacities Over Time to Sustain the Reforms.** Vietnam’s rapid reform efforts had to be implemented within the existing capabilities of government and private-sector institutions. As a result, care had to be taken to design analytical tools (the Forms) and IT requirements (the national e-registry database) that could be applied under the existing capabilities of institutions and staff, not only at the national level but down to local governments throughout Vietnam. While short-term training has been provided to enhance capabilities of current staff throughout the processes, non-government experts have been hired on a transitional basis to supplement current capabilities. For example, USAID is funding eight local consultants to work within the STF and Advisory Council secretariats to support technical and operations activities, and USAID and the Government of Vietnam have hired non-government experts to support the production of RIAs. A key lesson is that strategic, adaptive decisions can be made to implement a major regulatory reform effort by taking advantage of strengths in the current system, and compensating for weaknesses in existing skills and institutional capabilities. As we will note below, in most developing countries, donors have played an important role to help governments fill gaps that current government budgets and procedures cannot handle.

For a regulatory reform effort to be sustained over time, however, investments must be made in domestic capabilities. In Vietnam, most attention has been on getting the job done in the short-term. There has been relatively limited thought on developing longer-term capabilities to ensure the sustainability of these reforms. For example, there has been no effort to upgrade the university system to develop stronger teaching and research capabilities in areas important to regulatory reform, which could include core curriculum in economics, law and public administration departments. Universities could increase the capabilities of their faculty to provide useful in-service training on regulatory issues for government and private-sector staff, and to develop new cohorts of university graduates with stronger regulatory analysis skills. As well, greater research on regulatory issues can help focus the “best minds” on developing innovative approaches and constantly monitoring the success of the government efforts. Teaching and research on regulatory reform issues could be induced by government, donor/foundation or private funding.

Regulatory and administrative procedure reforms, which greatly influence the functions of state bureaucracies, are also closely tied to civil service and public administration reform. Thus, it is critical to link reforms to what bureaucracies will be doing functionally with the incentives and organization for how bureaucracies will operate.

**The Key Role of Donors, Especially USAID in Vietnam.**<sup>27</sup> Even though Vietnamese leadership politically initiated a large regulatory reform effort, it could not pay for it fully in practice, especially in the beginning. It proved difficult to adjust government budgets and to hire new government specialists quickly enough to meet tough performance deadlines.

Donors, particularly USAID, were asked to fill the gaps left by rigidities in government budgetary and staffing, and to help Vietnamese leaders to learn from international experience. The two USAID projects, with VNCI (Vietnam Competitiveness Initiative) in the lead on regulatory reform, were able to respond quickly and effectively because they already had available project funding and related policy mandates, they had established and trusted working relationships with government authorities and private-sector organizations built upon a tradition of demand-driven technical assistance with Vietnamese leadership, and they had a strong mix of foreign and Vietnamese staff who both understood well international experience and Vietnam's context.

USAID supported key elements of Vietnam's regulatory and administrative reform initiatives. USAID support for Project 30 has included:

- Supporting study tours for government leaders to learn from international experience;
- Providing international and local technical assistance (TA) to advise on the strategy, structure and implementation of all stages of Project 30;
- Helping to design and roll-out a national communication campaign for Project 30;
- Helping to fund, develop and operate the STF webpage, the e-registry (national database), and the tools and forms;
- Funding eight Vietnamese experts to work in the STF and Advisory Council on all aspects of Project 30; and,
- Supporting workshops and short-term training.

USAID support for revising the Law on Laws and conducting regulatory impact assessments has included:

- Supporting study tours for government leaders to learn from international experience (including Korea, Mexico and the United States);
- Providing international and local TA to comment on draft revisions to the Law on Laws and related implementing regulations;
- Supporting workshops for training and public-private dialogue on proposed revisions:
  - Helped develop a consensus among legislators, government officials, experts and interest groups on establishing RIAs and a 60-day public comment period as core components to better governance and competitiveness;

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<sup>27</sup> Other donors, especially the International Finance Corporation, have provided important support.

- Supporting the development of RIA capabilities for staff in government agencies, the National Assembly and the business sector:
  - Supporting a RIA Task Force and RIA Compliance Manual;
  - Supporting RIA training for government, NA and business staff;
  - On request, fund non-government experts to help conduct RIAs.

Ultimately, the Vietnamese Government will need to increase its budgetary support for these efforts – to date, financial support for the inventory and review work by the ministerial and provincial Task Forces has been squeezed largely from existing budgetary allotments, only substantial new funding has been provided for hardware purchases. In the short-run, however, the ability by donors to provide flexible, high-quality, demand-driven support for strategic activities has been critical for advancing all aspects of the reform effort. Over time, as well, donors can augment Vietnamese investments in the universities, government institutions, and private organizations that will be needed to underpin longer-term, transformative improvements in the regulatory and administrative systems.

## **ERRADA – EGYPT’S NEW REGULATORY REFORM INITIATIVE**

In February 2008, the Egyptian government initiated ERRADA – the Egyptian Regulatory Reform and Development Activity.<sup>28</sup> It operates under the Sub-Cabinet Committee of the Productive Sector, which is chaired by the Minister of Trade and Industry, and focuses on improving economic governance. Much like Vietnam and Indonesia, public frustration in Egypt with high-cost and ineffective regulatory policies and state administration has spurred reforms.

Twelve ministries with relevant economics and business interests are participating in the initial effort. Focus is on inventorying for the first time regulations under the authority of each ministry, and then reviewing those regulations based on whether they are legal, necessary and business friendly. Recommendations will then be made as to whether each regulation should be maintained, amended or eliminated. An e-registry is being developed that will publish all existing regulations under each participating ministry’s jurisdiction, and legal reforms will be enacted to assure a stronger regulatory review of new, draft regulations.

ERRADA’s approach is based on the following guiding principles: “[there is] no ideal regulatory model, but ... success as an open, innovative, competitive economy requires a low-cost, low-risk regulatory system that also reduces health, safety, and environmental risks and protects other public interests.” ERRADA’s vision is to establish an effective environment for investments, by supporting the establishment of a system to review and evaluate regulations with an aim of providing justice, efficiency, competitiveness and more job opportunities.

ERRADA’s strategic objectives are to:

- Create an inventory of business regulations and an electronic database that is accessible and clear;
- Evaluate the impact of business regulations to achieve better economic welfare for Egyptians;
- Establish a private and public institutional framework to review the impact of business regulations to better confront competitive economic challenges;

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<sup>28</sup> This section is based on a description of ERRADA in a powerpoint presented at an OECD/GfD seminar in Amman, Jordan on April 30, 2008, with updated information from the USAID project supporting reform activities in Egypt. DAI, as a sub-contractor for the USAID-TAPR II project, is providing TA to support ERRADA in Egypt.

- Fight corruption through establishing transparency and integrity; and,
- Increase local and international investments to create more job opportunities.

Operationally, ERRADA has four key phases (outputs):

1. **Inventory of Regulations** – each of the participating Ministries will create an inventory that encompasses all existing laws and subordinate regulations that affect individual citizens and businesses;
2. **Review of Regulations** – a regulatory review by a central authority in consultation with each of the participating ministries to determine whether a regulation is legal, necessary and business friendly;
3. **E-Registry** – a published electronic registry of all laws and regulations will be created that combines the inventory and review phases; and,
4. **Regulatory Impact Assessment (RIA)** – the long-term objective of this reform initiative is the adoption by the Government of Egypt of the principles of regulatory impact assessments to be a foundation of economic governance for Egypt, which will help to assure that new regulations developed over time are of high quality and effectively implemented.

To implement ERRADA, under the Productive Sector Ministerial Group, an ERRADA Board of Trustees has been established to lead and coordinate efforts by the twelve ministries to inventory, review and simplify regulations. A Business Advisory Council (BAC) has been established to advise the Board at all key stages of the ERRADA process. The BAC coordinates business input to ERRADA, monitors and does quality control on the inventory and review phases, and supports the national communication campaign.

Once regulations are inventoried in each ministry, a review phase is completed that asks whether the regulation is needed, legal and business friendly. An initial inventory and self-review is completed by Government Management Units (GMUs) in participating ministries, followed by a second review by a centralized ERRADA General Review Unit (GRU). An independent review by stakeholders is also provided. The GRU packages and submits evidence-based recommendations to the Board of Trustees for maintaining, revoking or simplifying regulations based on inputs from the government and stakeholder reviews, and creates an e-registry of regulations that is accessible to the public via the internet.

The following are core elements of ERRADA’s implementation strategy:

- **Political Support Strategy** — The Ministerial Group of the Productive Sector sponsors the initiative, with twelve participating ministries (key economic ministries).
- **Communications and Consultation Strategy** — Egyptian professionals and government officials support a communications campaign, including efforts to promote and “brand” the Regulatory Reform – Egypt website.
- **ICT Strategy** — Acknowledged as a core element of all aspects of the ERRADA initiative, with ICT hardware/software combined as an enabling networked service to enhance stakeholders’ advocacy and database communications systems.
- **Legal Strategy** — the ERRADA legal strategy focuses on the:
  - Elaboration of a clear definition of “legality” for the review phase.
  - Elaboration of legal analysis needed to determine if a regulatory revision can be done at the Governorate, Ministry, or Parliamentary level.

- Development of method to package changes to laws and subordinate regulations into separate packages during the review phase.

- **Management Support Strategy:**

- Support the recruitment of Egyptian experts for the GMU and GRU teams.
- Design training activities for the inventory and review phases.
- Deploy experts that support specific strategies of the initiative.
- Procure ICT equipment, TA, and training, including study visits.
- Secure active support of the private sector through the Business Advisory Council (BAC).

- **Economic Impact and Monitoring Strategy – Monitoring and Evaluation:**

- Adaptation of the Standard Cost Model to quantify the cost-savings of the Egyptian reform initiative;
- Constructing through the BAC a matrix of **indicators** to monitor reduction of the regulatory burden on businesses operating in Egypt;
  - Soliciting BAC participants to monitor measurable change of the regulatory burden; and
  - Disseminating progress in measuring the Egyptian indicators to regional and international norms.

- **RIA Development Strategy:**

- Have the Government of Egypt adopt the principles of regulatory impact assessment and develop a new basic law defining the role of the state in the regulation of the business environment.

Donor support, particularly the USAID-TAPR II project, is providing strategic and responsive support to ERRADA by providing and coordinating TA, training and equipment support; by providing strategic advice on ERRADA implementation; and by facilitating program management of the GMUs and GRUs. The basic organizational elements of ERRADA are up and running, focusing on twelve ministries.<sup>29</sup> The Inventory Phase has been largely completed, collecting around 250,000 general regulations with around 28,000 directly business related.<sup>30</sup> The review phase is commencing. There have already been several impressive early harvest results – the Ministry of Transportation has simplified and merged 800 regulations affecting 200 main roads in Egypt into one much more streamlined ministerial decree; the Ministry of Trade and Industry has revoked 83 obsolete industry-related decrees issued from 1958 to 1983, and have cancelled 404 decrees that conflicted with current investment incentives and duty exemptions.

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<sup>29</sup> Over the next year, several local governorates will conduct pilot inventories of regulations under their jurisdiction.

<sup>30</sup> Reflecting how outdated many regulations are in Egypt, thousands of regulations had to be collected from old paper archives in various store rooms, and then transformed into digital format.

# CHAPTER FOUR – CORE ELEMENTS OF A SYSTEMATIC INDONESIAN REGULATORY REFORM INITIATIVE

The potential for sustained economic, legal and governance benefits of a higher-quality regulatory system are apparent to many. The sheer magnitude of the problem, however, appears to be hindering systematic efforts to improve Indonesia’s regulatory system – both in terms of the number and reach of possibly tens of thousands of regulations by national and local governments, and in terms of the political challenge of overcoming vested interests that attach to many of these regulations and poor coordination among government agencies.

There are strong rationales for Indonesia to pursue a broad-based regulatory reform program. These include:

- **Legal Certainty** – ensure that regulations are transparent and clearly worded, legally authorized, consistent with other regulations, and effectively applied in practice.
- **Economic Growth** – stimulate business and economic activity that generates jobs, exports, and incomes through innovation and increased productivity by minimizing unnecessary regulatory burdens and reducing Indonesia’s high-cost economy.
- **Anti-Corruption** – reduce opportunities for corrupt acts through greater regulatory transparency and reduced bureaucratic discretion.
- **Public Services and Bureaucratic Reform** – improve the delivery of public services and the implementation of government activities.
- **Enhancing Democratic Processes and the Rule of Law** – improving regulatory decision-making processes and enforcement in practice, will in turn raise the respect by Indonesian citizens for democratic processes and the rule of law.

## CORE ELEMENTS OF A SYSTEMATIC REGULATORY REFORM EFFORT

For consideration and to stimulate discussion, we respectfully recommend a practical but integrated multi-track, multi-discipline approach that could be incorporated into an Indonesian Regulatory Reform Initiative. Our recommendations build on the strengths of the current regulatory system in Indonesia and work to compensate for its weaknesses in the short-run, as a transition to strengthening legal and administrative procedures and capabilities over the longer term. This approach is adaptive in the short-run, with the aim of becoming transformative in the longer-term.

**Systematic Regulatory Reform.** The overarching goal of a systematic regulatory reform effort is to develop a regulatory system made up of government and private institutions and people at the national and local levels that by law and by practice ask hard regulatory quality questions at all stages of the development, implementation and monitoring of regulatory policy and implementing procedures. It’s the creation of a mind-set, a value system and learning process at all levels of government and civil society that favor high-quality regulation. It works literally each day to eliminate the many irritating but often essentially minor regulations that are poorly written and legally inconsistent. And, it stimulates a more “evidence-based” process that takes into account the full public interest

when making hard decisions on more complex regulations and policy issues with serious and wide-ranging impact. Taking a systematic approach reveals more clearly the important links and synergies: a) among governance, rule of law, and economic competitiveness objectives; b) between and among national and regional/local governments and parliaments, and with private stakeholders; c) among different professional disciplines and functional units (especially economists and lawyers); d) for guiding and coordinating strategic investments in institutions, analytical and procedural tools, human resource capabilities, and public communication.

#### **Core Elements of a Systematic Regulatory Reform Effort:**

- **Enhance Political Will and Define Manageable Problems and Solutions** – Generate a broad political mandate for systematic regulatory reform; organize/socialize the challenges of regulatory reform into a more manageable form that is linked to national development objectives and that is supported by viable solutions with implementable approaches and tools.
- **Inventory, Review and Simplify Existing Regulations** – Inventory and maintain / revoke / simplify / strengthen existing regulations and implementing procedures.
- **Ensure That New Regulations Will Meet High Regulatory Quality Standards** – Strengthen standards and legal processes for drafting new regulations and monitoring the on-going viability of existing regulations.
- **Publish an Up-to-date e-Registry of Regulations and Procedures** – Develop, publish and continually update a user-friendly e-registry available to the public that serves as a national database of all relevant regulations and administrative procedures legally in effect.
- **Adapt in the Near-Term; Transform in the Long-Term** – Strategically enhance existing capacities to carry out regulatory reform now; invest in transformative advances in institutional and human resource capabilities to sustain high-quality regulation over time.
- **Tactical Considerations** – Leadership; scope; transparency; accountability; deadlines; communication; IT; private-sector input; analytical tools; coordination and cooperation; multi-disciplinary.

Although there is considerable benefit from learning what has worked in other countries, ultimately each country must adopt a regulatory reform approach that achieves well-defined domestic development objectives and that is tailored to operate in that country's context. As quickly becomes evident in any discussion in Indonesia about advancing a more aggressive regulatory reform effort, a number of real and difficult challenges exist and will be difficult to overcome. If international experience is a guide, however, other countries, both developing as well as developed, have confronted similar challenges and developed practical approaches that work through their internal constraints to advance meaningful regulatory reform.

## **RECOMMENDATIONS TO ADVANCE A SYSTEMATIC REGULATORY REFORM INITIATIVE IN INDONESIA**

The following respectfully recommends some possible approaches for Indonesia to advance a systematic regulatory reform effort.

### **1. Enhancing Political Will and Organizing the Problem**

- **Create a Wise Person Group to Produce a White Paper on Regulatory Reform** – When policy challenges are complex and political forces for change are diverse, a Wise Person Group can help to better organize the problem into manageable issues and present practical recommendations for reform in a political context. In this

way, a political and intellectual “high ground” can be obtained. Such a multi-disciplinary and multi-interest group could consist of a mix of technical experts (academics/researchers), current or former government officials, political party representatives, and private-sector leaders. The group could be chaired by a person who has personal credibility among political interests and technical experts, accompanied by several support staff. Such a process can mobilize constituencies in favor of the reform, and assuage those who may resist.

A White Paper on Regulatory Reform could be developed that is aimed at political decision makers, with supporting papers developed to provide more detailed, technical analysis and approaches for carrying out the reform. The goal is to organize what currently appears to be an overwhelming task into a more manageable form and to provide practical recommendations for how to advance regulatory reform in the current Indonesian context. This could be aimed at elevating regulatory reform to a priority policy objective for the new administration and Parliament, with the goal of completing a systematic regulatory reform by 2014 – by the end of the upcoming five-year term of the President and Deputies.<sup>31</sup>

- **Include Regulatory Reform as a Priority in the 2010-2014 National and Regional Medium-Term Development Plans (RPJMD and RPJMD), with Budgetary Allocations in Annual Government Work Plans (RKPN and RKPD)** – To embed higher-quality regulations as a high priority for government activity, key principles of regulatory reform could be included more prominently as a national policy objective for the incoming administration in the 2010-2014 Mid-Term Development Plan, supported through the annual budget plans. This would achieve two tactical results: 1) funding could be made available throughout the government (and for outside expertise as needed) to carry out regulatory reform efforts; and 2) regulatory reform could be established more firmly among the bureaucracy as a national policy priority, with incentives and rewards for achieving regulatory reform goals.

We support the proposal that the BAPPENAS regulatory simplification initiative be included in the 5-year Medium-Term Plan, but suggest that broader goals and specific funding support could be included, specifically more emphasis on linking efforts for legal certainty with economic growth, and linking efforts to simplify existing regulations with stronger procedures for developing new regulations. The sooner specific elements of an integrated approach to regulatory reform are developed, the needed budgetary allocations required to support such a program will become better defined. As the Vietnamese and Egyptian experiences illustrate, the extent of a regulatory simplification or even broader reform effort will involve tens of thousands of legal instruments that will require decentralized teams across (national and local) government agencies to inventory, review and make recommendations for reform, as well as investments in IT, tool development, procedures and technical expertise.

- **Support More Serious Research: Create a Research Fund for Regulatory Reform** – If regulatory reform is a high priority policy goal, then the “best and brightest” should be conducting research and thinking through the problem and possible solutions. A Research Fund could be allocated competitively for academics and other research groups and NGOs to assess problems, to consolidate research findings, and to test possible solutions through pilot programs and related research activities. A multi-disciplinary learning process could be encouraged, combining near-term policy analysis with longer-term capacity building among universities, research groups and NGOs. This can also stimulate public interest and the building of constituents for reform.

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<sup>31</sup> If a Wise Person Group and White Paper are too formal, then a less formal advisory or expert group could be formed. The key is to advance a process over the next six months as the new administration and parliamentary leadership take form to promote a multi-disciplinary and multi-interest dialogue among credible experts, and to prepare papers with analysis and recommendations for a systematic regulatory reform initiative that targets both a political and a technical audience.

## 2. Inventory, Review and Simplify Existing Regulations<sup>32</sup>

- **Develop a comprehensive approach with accountability and deadlines to inventory, review and simplify existing regulations.** Once the scope of coverage for reforming existing regulations is determined, we recommend a focus on four key phases to inventory, review and simplify regulations:<sup>33</sup>
  - **Inventory Phase** – Develop an inventory of existing regulations and administrative procedures, published in a searchable, national database or registry and updated over time.
  - **Regulatory Quality Review Phase<sup>34</sup>** – Create analytical tools and application procedures to evaluate the quality of relevant regulations that are feasible in the Indonesian context; apply basic (Brief or Lite) regulatory quality criteria to lower-level regulations, administrative procedures and forms, and apply more robust review criteria (RIA or RegMAP Comprehensive) to major laws and regulations with broad and substantial impact.<sup>35</sup>
  - **Recommendation Phase** – Prepare implementable recommendations to maintain, simplify, revoke or strengthen regulations; draft changes should be provided for simplification or strengthening.
  - **Policy Action Phase** – Submit recommendations to competent authorities and facilitate a process for carrying out the recommendations in terms of legal changes; monitor the impact of the changes over time.

Exactly how the above is carried out in Indonesia involves a number of considerations and decisions, many of which are discussed in more detail below in terms of tactical considerations. International best practice has shown that productive, comprehensive reforms of existing regulations are most effective when led by an accountable team with strong high-level political support and with clear, publicized objectives and deadlines – typically the team reports directly to the head of the government (President) if the reform effort is wide-ranging, or to the minister if the reform effort is for a ministry, with deadlines over two to three years for the overall process.

Key steps for carrying out this approach can be summarized as follows:

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<sup>32</sup> As noted below, the scope of the reform effort would determine the specific parameters for cataloguing and review. For example, whether all regulations and administrative procedures are included, or a more narrow sub-group, such as for a specific ministry.

<sup>33</sup> In addition, there should be a monitoring and evaluation process to assess the impact of the reform effort, and to stimulate learning for how regulatory reform can be best sustained over time.

<sup>34</sup> The normal review approach is to evaluate each regulation based on established regulatory quality criteria. In practice, however, groups of regulations often interact with each other to affect businesses and citizens. For example, a group of regulations may affect the supply and distribution chain for an industry, or may affect the import of a product through various stages of entry through a port, such that reviewing each individual regulation in isolation may neglect critical interactions with other regulations. In such cases, a group of regulations should be reviewed as one package.

<sup>35</sup> Given resource constraints, the following sequencing strategy could be applied – a rapid regulatory simplification program completed over several years that evaluates tens of thousands of regulations and procedures based on legal consistency, need, compliance burden and market friendliness. Certain major laws and regulations could be targeted for rapid and more robust review where there is already momentum for reform (e.g., business licenses as contemplated by PEPI, the natural resource and energy laws and regulations and ICT laws and regulations over the next year or two, as noted above). More rigorous reviews of all other laws and regulations could be conducted more gradually over time.

### **Key Steps to Inventory, Review, Recommend and Change Existing Regulations**

1. **Political decision** to reform; establish the objectives, leadership and scope of the reform effort; communicate the importance of the effort to the public.
2. **Institutional set-up** for the reform program: including determination of leadership and accountability; and the establishment of supervisory teams, task forces, business coordination agency, etc., along with identification of needed personnel. This usually involves decentralizing responsibility to inventory and review regulations to cognizant ministries and local governments, with quality control and accountability built into the process.
3. **Procedures, Tools and IT.** Develop and/or procure needed inventory and regulatory review tools (including IT hardware and software, regulatory quality review applications, guidances, etc.), which need to be considered at the beginning of the program and adapted as necessary as the program is carried out.
4. **Training and socialization** activities to familiarize members of task forces and related units within the program on how to use the tools and to carry out the required activities.
5. **Inventory all existing laws and regulations**, to be compiled in a centralized registry available publically. There may be many existing stand-alone databases that need to be incorporated into the central registry. If the scope of the inventory is targeted to a specific sector, regulatory problems for that sector will have to be identified and mapped to the relevant regulations, which can be facilitated through stakeholder consultations.
6. **Regulatory quality analysis** of each relevant regulation (or groups of regulations). This can be done at different levels. A more simple criteria (e.g., RegMAP Brief or RIA-Lite) can be provided as an initial review of thousands of regulations, which can be used to determine basic legality and relevance, and can provide an indication as to whether a regulation causes more serious problems. Many regulations may be recommended to be revoked or simplified based on these basic legal criteria, while those with other problems can be assigned for further and possibly more in-depth analysis (e.g., RegMAP Comprehensive or a full RIA). The review will typically be conducted in a decentralized manner (many institutions/task forces conduct reviews of particular groups/categories of regulations), either to review a large number of regulations quickly, or to use specialists for more in-depth analysis.
7. **Stakeholder consultations** conducted at all stages of the process to obtain feedback and recommendations from those most affected by regulations, from a private-sector perspective; preferable to allow the private sector to interact with decentralized officials but also to develop a direct, independent voice to leaders and key decisions makers in the reform effort. This can be facilitated by creating a public-private advisory group with full access to all aspects of the reform process. Private-sector input should be incorporated into all relevant proposals for final policy changes.
8. **The Final Result: Concrete, Meaningful Reforms and a Regularly Updated e-Registry of Regulations and Procedures.** Establish a fast-track process approving, promulgating and implementing concrete improvements in regulations and administrative procedures/forms, including revisions, merging or revocation of problematic laws and regulations.

*Note: Monitoring and evaluation, as well as training and socialization, should be conducted as needed throughout the program.*

- **Support the BAPPENAS-DAPP Regulatory Simplification Program, But Should It Be Strengthened and Broadened?** The proposed BAPPENAS Regulatory Simplification Program described in Chapter II is being developed and refined. Importantly, it is the first proposal to inventory, review and recommend changes on a systematic basis across all regulations at the national and local levels. Its conceptual approach is comprehensive and bold; it holds the potential of being integrated into the 5-year and annual development plans that could provide budgetary support for implementation throughout different levels of government; it has developed a MAPP (RegMAP Brief) tool for evaluating the quality of each regulation; and it promotes creating Action Plans to further the political process to make actual policy/legal changes. The bottom-up, gradualist approach to implementing the program in practice focuses on legal certainty objectives led by legal departments and must rely on gathering bureaucratic allies and facilitating cooperation among legal-policy leaders throughout all levels of government. While BAPPENAS can educate and facilitate, it has limited authority to impose requirements on

other ministries and local governments. A key challenge for this approach is how accountability and quality control can be maintained among so many agencies and levels of government.

A strong regulatory simplification effort focusing on legal certainty could lead to the elimination and merging of thousands of overlapping, inconsistent and unneeded regulations, to the clearer wording of remaining regulations, and it should strengthen the capacities of legal departments – all quite important results. But its approach does not yet explicitly coordinate reform efforts with other disciplines and functional divisions in government, especially with the economics/business divisions that promote regulatory reform as an economic growth policy. The analytical process does not differentiate between relatively minor regulations that may be reviewed with a “Brief” regulatory analysis tool and major regulations that are complex and have a broad effect, which should be reviewed using the more robust RIA or RegMAP Comprehensive processes.

- **While the BAPPENAS proposal merits strong support, are opportunities being lost?** Is the approach sufficiently empowered with the authority to carry out the regulatory simplification program effectively given the challenge of effective cooperation among ministries and between national and local governments?

We recommend that consideration be given to broadening the BAPPENAS program to include more strongly whether regulations unnecessarily hinder economic competitiveness, particularly in terms of compliance burden and economic inefficiency.<sup>36</sup> This should include analysis of how groups of regulations may interact to affect key economic functions, such as supply and distribution chains, or customs and port clearance. This would require greater cooperation between the legal and economic divisions in government, which could start with a “joint effort” between the Coordinating Ministries for Economic Affairs and for Political, Legal and Security Affairs, and filter down throughout the national and local governments. We recommend as well that greater authority, accountability and explicit deadlines be established to advance a regulatory reform program, which may require elevating leadership of a more systematic regulatory reform effort to a higher-level authority (a Regulatory Commission or within the State Secretariat) that stands above each ministry, that reports directly to the President, that has adequate budgetary backing, that has legal accountability to carry out the program within clearly defined deadlines, that has a mandate for transparency and interaction with the private sector, and that links reform of existing and future regulations. The Wise Person Group and research community could provide politically- and technically-viable recommendations and options for this to happen, building upon international experiences and Indonesian contexts.

### 3. Ensure That New Regulations Will Meet High Regulatory Quality Standards

A systematic approach to regulatory reform aims to simplify and rationalize existing regulations and, in parallel, to strengthen procedures for developing new regulations to ensure sustained impact over time. Whereas the inventory and review phases typically involve tens of thousands of regulations and scores of agencies, strengthening procedures for developing higher-quality regulations over time can be as straight-forward as changing literally several hundred words of key laws, particularly Law No. 10 of 2004, related laws, and their implementing regulations.

Once more robust procedures are established for drafting and approving regulations, however, developing the capacity to implement more robust procedures are quite demanding, involving many agencies. In particular, while legal departments have responsibility for reviewing draft laws and regulations, they rarely have the technical cost-benefit skills and understanding of compliance burden needed to apply more rigorous review

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<sup>36</sup> The Standard Cost Model provides an internationally-tested methodology for assessing the compliance burden of administrative actions, which could serve as an input for developing an Indonesian tool for evaluating the compliance burden of existing or proposed regulations (see SCM Network, 2005).

criteria. This requires training and socialization, as well as cooperation with other divisions in an agency (e.g., with the economics divisions), with private stakeholders, and in some cases requires the use of external experts. Once in place, legal procedures that require applying tough regulatory quality standards on those who draft regulations, on stakeholders who comment on drafts, and on those authorities who review and approve regulations, can generate a dynamic deep into the government's institutional structure that works on a continual basis over time toward a higher-quality regulatory environment.

- **Revise Law Number No. 10 of 2004 and Develop Implementing Regulations to Require High-Quality Regulatory Reviews for Drafting All New Regulations and Administrative Procedures with Mandated Public Comment Periods; Replace Academic Papers** –The current requirements for reviewing draft laws and regulations in Law No. 10 of 2004 should be clarified and strengthened, with expedited development of strong, supporting implementing regulations. The goal is to provide clear and robust guidelines that take into account the core elements of regulatory best practice – legal certainty, policy effectiveness, and minimization of unnecessary or unintended compliance burden and economic efficiency criteria – for reviewing draft regulations at all levels of government. The specific wording for revisions could be developed by legal experts, but in principle, it should require that regulatory impact assessments (or at least RegMAP Comprehensive-level criteria) be applied to all higher-level laws and decrees, and RIA-Lite (RegMAP Brief) be applied to all lower-level regulations and administrative procedures. Appropriate training and capacity development should be provided to support these more robust review criteria, and law and economic/business departments should be encouraged to cooperate.

These requirements should **replace the current system of academic papers**, which rarely have provided useful regulatory review input in practice.

- **A public comment period of 30 to 60 days** should be mandated for all draft laws and regulations with a supporting report that describes why a law or regulation is needed that includes the regulatory review.<sup>37</sup> The public comment period is critical both to provide input to strengthen the final drafts of laws and regulations, and to keep the public informed of upcoming reforms so that they have more time to prepare for compliance.
- **Enhance Harmonization Processes of Draft Laws and Regulations by Requiring a Review of High-Quality Regulatory Criteria.** Harmonization of new laws and regulations are conducted as the final review for regulatory quality before approval in order to avoid future disputes and ineffective implementation. The Ministry of Law and Human Rights leads this process at the national level, and there is a gradual extension of harmonization to local government regulations. A manual is being developed by the MoLHR to strengthen and standardize this process.

We recommend that the harmonization process and supporting manual include a full set of high-quality regulatory quality criteria, as mandated by our recommendation for revision to Law No. 10 of 2004. In particular, there should be clear requirements to include regulatory review for legal certainty, and minimizing compliance burden and economic inefficiencies.

#### **4. Publish an Up-to-date National Registry of Regulations and Procedures**

- **A National e-Registry of Regulations and Procedures Should Be Published and Maintained Over Time.** A national database/inventory should be collected (possibly from the inventory phase of a regulatory reform effort) and published through a user-friendly database program with a search function and easy public

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<sup>37</sup> Laws and regulations formulated under emergency conditions can be exempted from this requirement.

access. As the regulatory reform process evolves, all reviews and recommended changes in regulations should be included in this database. If at all possible, this should include all laws and regulations at the national and local levels that are legally in effect. This will require investment in software, hardware and IT expertise.

## 5. Adapt in the Near-Term, Transform in the Long-Term

- **Strategically Augment Existing Capabilities to Carry Out a Regulatory Reform Effort in the Near-Term; Invest in Transformative Improvements in Institutional and Human Resource Capacities in the Long-Term.** A regulatory reform effort has to be implemented within existing institutional and human resource capacities. Regulatory quality tools and procedures should be designed to operate in the existing environment, augmented by targeted short-term training, self-explanatory tools and simplified guidance manuals. It is critical, as well, to conduct a socialization campaign to raise public awareness regarding the importance of regulatory reform and the proposed reform activities. Early harvests of regulatory reforms should be targeted to build confidence and credibility for a longer-term regulatory reform program. Over time, investment should be made in universities, in-service training of government officials, and in think-tanks and NGOs, to upgrade core capacities that would facilitate steadily more effective regulatory quality. The Research Fund noted above could encourage stronger research and policy analysis; universities could be provided funding to support the development of regulatory quality programs with specialized curriculum and appropriately qualified faculty.

## 6. Tactical Considerations

- **Leadership; scope; transparency; accountability; deadlines; communication; IT; private-sector input; analytical tools; coordination and cooperation; multi-disciplinary.** Tactical decisions will have to be made on how best to handle all of these considerations in order to develop an effectively designed and implemented Indonesian Regulatory Reform Initiative. And these decisions will inherently be inter-related – for example, whether a top-down approach led by a Presidential Commission is used or a bottom-up approach implemented through cooperation among legal departments, will depend on the scope of the initiative and will determine accountabilities. Our recommendations above touch upon many of these tactical considerations. Given the interactive nature of these decisions, it is not possible to provide definitive recommendations for each tactical decision without reference to an overall program strategy. We can recommend, however, that a regulatory reform program is more likely to be successful if:
  - There is strong leadership established with clearly defined objectives and tasks that include established deadlines and clear lines of accountability. It is particularly important at the beginning of the effort to achieve key initial successes to energize the bureaucratic process and to raise credibility with the public;
  - The scope of the regulatory reform program can be determined from the start. A tactical decision must be made as to the ambition and coverage of a program, given political and institutional realities – a bold, comprehensive program could be created that would require strong political leadership and more resources to be carried out successfully, with the promise of substantial, system-wide impact; or smaller programs could be initiated in areas where successful but more limited outcomes may be most likely, capitalizing on the success to expand the scope of the reform effort over time.
  - The reform initiative is as transparent as possible, accompanied by effective communication strategies, targeted both to the many government officials involved in the reform process, and to the general public, especially to key stakeholders. This raises public accountability, and contributes to educating all elements of society about the importance of a higher-quality regulatory system.

- Well-designed IT systems and analytical tools are developed to facilitate the operational challenges both of standardizing and managing the inventorying and reviewing of tens of thousands of regulations by thousands of personnel in scores of ministries, regions and sectors, and of facilitating public transparency and input by private stakeholders.
- Private-sector input is included in every key element of the process, especially from the business community, who know best the regulatory constraints faced in their day-to-day operations. A Public-Private Advisory Group can be developed to encourage, channel and capture the inputs from the private sector.
- There is effective coordination and cooperation among the wide array of government agencies in the national and local governments who will be responsible to carry out the regulatory reform effort, and with the private sector, NGOS, universities/researchers and other elements of civil society. Given the size and complexity of a systematic regulatory reform in a country like Indonesia, coordination and cooperation among key stakeholders and political interests will be essential.
- There are multi-disciplinary inputs, especially among lawyers, economists, business specialists and experts representing other key interests, including labor, farmers, consumers and the environment. The OECD (2009) notes that different backgrounds and approaches help enrich regulatory simplification strategies and avoid an excessive dominance of one of these fields of expertise; in the Indonesian context, it can avoid ego-centric (functional stovepiping) actions that limit synergy and mutual reinforcement in carrying out the activities needed to achieve important policy objectives.

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# ANNEX 1: REGMAP BRIEF AND REGMAP COMPREHENSIVE REGULATORY QUALITY INDICATORS

## Regulatory Quality Indicators Used by RegMAP Brief (or MAPP):

*Main Statement 1: Legal Basis, with the following supporting criteria:*

- a. The regulation has taken into account the legal hierarchy and is in line with the relevant higher level regulations.
- b. The regulation has made reference to other relevant regulations, both at the same or higher levels.
- c. The regulation has based its legal justification on up-to-date regulations.

*Main Statement 2: Importance and Need, with the following supporting criteria:*

- a. The regulation has clear objectives that represent viable solutions to the problem(s) addressed.
- b. There is consistency between the objectives to be achieved and the formulation of the articles that have been set to achieve those objectives.
- c. The regulation has been formed to protect the public interest.
- d. The regulation is necessary and it represents a proportionate response to the risks and problems being addressed.
- e. The regulation's objectives can be achieved without imposing unintended burdens on groups affected by the regulation.

*Main Statement 3: Implementation Preparation, with the following supporting criteria:*

- a. The central and/or local government agencies/institutions that will implement and enforce the regulation have been stated clearly.
- b. The implementation and enforcement of the regulation has been clearly arranged for easy execution.

## Regulatory Quality Indicators Used by RegMAP Comprehensive:

### Category: Legal Aspect

*Main Statement 1: The regulation has appropriately referred to related laws and regulations, with the following supporting criteria:*

- a. The regulation has taken into account of the legal regulatory hierarchy as stated in related laws (such as Law 10/2004)
- b. The regulation has described other relevant regulations that have the same or higher-level thematic or sectoral basis and that may reasonably be expected to be taken into account
- c. The regulation has based its legal justification on up-to-date regulations

### Category: Purpose of Intervention

*Main Statement 2: The regulation clearly explains the main objective(s) it is intended to achieve, with the following supporting criteria:*

- a. The purpose and the intended impact of the regulation has been clearly explained and related to the problems being addressed.
- b. There has been consistency between the objectives to be achieved and the mechanism(s) to achieve it.

*Main Statement 3: The regulation is justified in terms of the public interest, with the following supporting criteria:*

- a. Public interests can be consumer protection, labor protection, public health and/or safety, fair access to markets for small businesses, or protection of the environment.

*Main Statement 4: The regulation is proportionate to the policy problem it is intended to address, with the following supporting criteria:*

- a. The intervention is a proportionate response to the risks and policy problems being addressed.

#### Category: Alternatives

*Main Statement 5: Available alternatives to the regulation will be less effective in addressing the problem, with the following supporting criteria:*

- a. The policy problem to be addressed could not have been dealt with more effectively through any alternatives to that regulation, such as: 1) self-regulation, 2) information and awareness campaigns, 3) financial and fiscal incentives, including tax breaks, soft loans or subsidies, 4) quality assurance marks or voluntary standards, or 5) simplification of existing regulations.

*Main Statement 6: The regulation minimizes the risk of unintended consequences, with the following supporting criteria:*

- a. The regulation can achieve its stated objectives with the minimum burden on those affected and does not impose unnecessary costs or negative impacts on non-targeted groups.

#### Category: Communication

*Main Statement 7: The regulation is written in plain, easy to understand language and is easily accessible to all stakeholders, with the following supporting criteria:*

- a. The title of the regulation is consistent with the (main) provision it intends to regulate.
- b. The regulation can be understood easily by targeted stakeholders, including small business owners.
- c. The regulation is not open to multi-interpretation by public officials and therefore reduces the potential for rent-seeking opportunities.
- d. Copies of the regulation can be easily obtained by stakeholders from the internet or appropriate government offices.

#### Category: Compliance

*Main Statement 8: How the regulation will be enforced, and by whom, is clear, with the following supporting criteria:*

- a. The regulation describes clearly who is responsible for enforcement.
- b. The regulation adopts a realistic approach to enforcement; e.g. license renewal periods do not occur more than once a year.

*Main Statement 9: The costs and practicalities of enforcement have been thought through, with the following supporting criteria:*

- a. The regulation details how it is enforced and delegates responsibility to the most appropriate level of government.
- b. The sanctions are clearly explained in the regulation and are reasonable.

#### Category: Economics and Social Impacts

*Main Statement 10: In qualitative terms, the benefits of the regulation outweigh its costs, with the following supporting criteria:*

- a. In general, the benefits produced by the regulation outweigh its costs in terms of economic, social, environmental and other aspects. To facilitate answering this question, the reviewer must complete an attached Cost and Benefit Matrix.\*
- b. The benefits and the costs (impacts) of the regulation have been distributed fairly across the economy and society.

*\* A simple (qualitative) cost-benefit analysis matrix using a Likert scale of 1-4 is provided to help the regulatory review process and is required as part of the RegMAP Comprehensive process.*

# ANNEX 2:

## FORMS USED BY VIETNAM'S PROJECT 30

(VERSIONS AS OF JULY 30, 2009)

### FORM 2 – REVIEW OF ADMINISTRATIVE PROCEDURES<sup>38</sup> (by government agencies)

Dossier Number	Assigned by the Special Task Force at inventory stage
Name of the administrative procedure	The name will be automatically generated by the electronic database.
Review Area	This will be automatically generated by the electronic database
Reviewing Agency	
<b>PLEASE RESPOND TO THE QUESTIONS</b>	
<b>I. On the legality of the administrative procedure</b>	
1. Is the administrative procedure required in accordance with authorized power?	Yes <input type="checkbox"/> No <input type="checkbox"/> <b>If the answer is NO, the procedure is illegal and must be abolished partly or wholly.</b>
2. Are the documents governing this administrative procedure legal normative documents?	Yes <input type="checkbox"/> No <input type="checkbox"/> <b>If the answer is NO, the procedure is illegal and must be abolished.</b>
3. Is the content of the administrative procedure contrary to other regulations issued by higher level state agencies?	Yes <input type="checkbox"/> No <input type="checkbox"/> <b>If the answer is YES, the procedure is illegal and must be abolished partly or wholly.</b>
4. Are this administrative procedure and related regulations still effective?	Yes <input type="checkbox"/> No <input type="checkbox"/> Please specify ..... <b>If the answer is No, the procedure is invalid and must be abolished.</b>

<sup>38</sup> An administrative procedure consists of many elements such as name of the AP, steps and mode of implementation, dossier, deadline for response, etc. Elements of an AP may be required in the same document or different documents.

<p><b>5. With your answers to question 1-4 above, do you think if this administrative procedure is legal or not?</b></p> <p><b>Yes</b> <input type="checkbox"/></p> <p><b>No</b> <input type="checkbox"/></p> <p><b>If the answer is NO, this administrative procedure should be abolished or replaced.</b></p>	
<p><b>II. On the necessity of the administrative procedure</b></p>	
<p>6. Is the objectives of the administrative procedure clearly defined?</p>	<p>6.a. What are the objectives?</p> <p>What are the management purposes?</p> <p>6.b. Are the objectives clear enough to compare the implementation results with the set objectives?</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
	<p><b>If the answer to 6a is left blank or the answer to 6b is No, the procedure must be abolished or replaced to aim clearer objectives.</b></p>
<p>7. Does the administrative procedure inhibit business activities due to the fact that such administrative procedure contains any of the following restrictions?</p>	<p>Lack of transparency <input type="checkbox"/></p> <p>Implementing agency not defined appropriately <input type="checkbox"/></p> <p>Requiring individuals, organizations to make many visits to the implementing agency to settle <input type="checkbox"/></p> <p>Time for response too long <input type="checkbox"/></p> <p>Fee requirements too high</p> <p>Required dossier too complicated, too difficult to implement <input type="checkbox"/></p> <p>Discrimination between national individuals/organizations and foreign individuals/organizations <input type="checkbox"/></p>
<p>8. Are there any alternatives to the administrative procedure and related regulations that would still ensure the achievement of the management purposes?</p>	<p><b>Yes</b> <input type="checkbox"/></p> <p>If "Yes", please specify the alternatives.....</p> <p><b>No</b> <input type="checkbox"/></p>
<p><b>9. With your answers to questions 6-8, is the administrative procedure and related regulations still in need?</b></p> <p><b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/></p> <p><b>If the answer is No, the procedure must be abolished, replaced or revised.</b></p>	
<p><b>III. On the reasonableness/consistency of the administrative procedure</b></p>	
<p>10. Is the administrative procedure overlapping, inconsistent with, and contradicting other procedure(s)?</p>	<p>10.a. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>10.b. If "Yes", explain and specify the name of such other procedure(s).</p> <p><b>If the answer to 10.a. is YES, these overlapping, the duplicative or inconsistent administrative procedures should be combined, abolished or revised for consistency.</b></p>

<p>11. Does the administrative procedure clearly define the agency/organization responsible for handling APs for individuals and organizations or not?</p>	<p>11.a. Yes <input type="checkbox"/></p> <p>11.b. No <input type="checkbox"/></p> <p><b>If the answer is “No”, the procedure must be revised to define clearly the agency/organization responsible for handling APs. Please specify how to revise.</b></p>
<p>12. Does this administrative procedure clearly define steps and mode of implementation?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p><b>If the answer is “No”, the procedure must be revised to define clearly the agency/organization responsible for handling APs. Please specify how to revise.</b></p>
<p>13. Are the regulations on the elements and numbers of dossiers relevant or not?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p><b>If the answer is “No”, please specify the reasons and propose the elements, number of dossiers to reduce burden for individuals and organizations.</b></p>
<p>14. Does the administrative procedure provide explicit deadlines for any response by the state management agencies?</p>	<p>14.a Yes <input type="checkbox"/> No <input type="checkbox"/>...</p> <hr/> <p><u>14.b If “Yes”, what is the mandatory time needed for response?</u> .....</p> <p>14.c Can this time be shortened? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If the answer is YES”, what is the shortened time, and why?</p> <p><b>If the answer to question 14.a is NO, the deadline for response should be explicitly stated in the administrative procedure. If the answer to question 14.c is YES, the deadline for response should be shortened to reduce time cost for enterprises.</b></p>
<p>15. Does the administrative procedure require the result of settlement of (an)other administrative procedure(s) or not?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p><b>If “Yes”, can the inter-departmental mechanism be applicable for handling APs to reduce the burden for individuals and organizations or not?</b></p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p><b>If Yes, please specify how to apply the inter-departmental mechanism and propose the lead receiving agency.</b></p>
<p>16. Is the administrative procedure applied nationwide or locally?</p>	<p>Nationwide <input type="checkbox"/> Locally <input type="checkbox"/></p> <p><b>If the answer is “Locally”, is the regulation relevant?</b></p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p><b>If the answer is NO, please specify why.</b></p>

17. Are there any complaints or comments on the complexity and cost of the administrative procedure?	16.a Yes <input type="checkbox"/> No <input type="checkbox"/>
	16.b If "Yes", please summarize the comments: .....
	16.c If "Yes", please recommend how to simplify the administrative procedure .....
<b>18. With your answers to questions 9 – 17 above, is the administrative procedure reasonable and consistent/in line with the business activities/enterprises?</b>  Yes <input type="checkbox"/> No <input type="checkbox"/>  <b>If the answer is "No", the procedure must be simplified or abolished.</b>	
<b>IV. On cost for implementing the administrative procedure</b>	
19. Are there any fees to be paid when the administrative procedure is implemented?	19a. Yes
	19b. No
	19c. If Yes, please specify the rate and amount of the fee(s) per year .....
<b>V. Recommendations</b>	
<b>20. This administrative procedure (Check only one recommendation)</b>	
<input type="checkbox"/> Fully meet the criteria in this Form and should be maintained without change.	
<input type="checkbox"/> Would meet the criteria if revised, and should be maintained only with revisions that are clearly specified →	Specify revisions.
<input type="checkbox"/> Does not meet the criteria and must be abolished. →	Specify the legal procedure to abolish the procedure and related regulations:
THIS FORM TO BE SUBMITTED TO SPECIAL TASK FORCE IN ELECTRONIC FORM BY 31 MAY 2009 BY MINISTRIES AND AGENCIES, AND BY 31 OCTOBER 2009 BY PEOPLE'S COMMITTEES	
21. Contact person of the Ministry, agency, or People's Committee who can answer questions about this administrative procedure.	Name: _____  Telephone: _____

**FORM 2a – REVIEW OF ADMINISTRATIVE FORMS AND DECLARATION FORMS (by government agencies)**

<b>GENERAL INFORMATION ON THE FORM:</b>	
Dossier Number	Assigned by the Special Task Force at inventory stage
Name of the form/declaration form	The name will be automatically generated by the electronic database.
Review Area	
Reviewing Agency	
<b>PLEASE RESPOND TO THE QUESTIONS</b>	
<b>I. On the legality of the form/declaration form and related regulations</b>	
1. Is the form/declaration form promulgated in accordance with authorized power?	Yes <input type="checkbox"/> No <input type="checkbox"/> If the answer is YES, please specify the promulgating agency.
Are the documents governing this form/declaration form still in effect?	Yes <input type="checkbox"/> No <input type="checkbox"/> If the answer is YES, please specify the name of the document. If the answer is NO, the form/declaration form should be abolished.
<b>II. On the necessity of the form/declaration form</b>	
3. Is the form/declaration consistent and in line with management objectives?	3.a. What are the management objectives? 3.b. Is the form/declaration consistent and in line with the above objectives? Yes <input type="checkbox"/> No <input type="checkbox"/> If the answer is NO, please specify why.
4. If the form/declaration form does not exist, what difficulties will citizens and businesses meet?	Yes <input type="checkbox"/> No <input type="checkbox"/> If the answer is YES, please summarize the difficulties.
<b>III. On the reasonableness/consistency of the form/declaration form</b>	
5. Does the form/declaration form require certification by an authorized state agency or not?	5a. Yes <input type="checkbox"/> No <input type="checkbox"/> If the answer is YES, please specify the agency and answer question 6c.
	5b. Is it necessary to obtain certification of the authorized state agency? Yes <input type="checkbox"/> No <input type="checkbox"/> If the answer is NO, please specify why.
6. Is the content of the form/declaration form easy to understand, easy to implement?	Yes <input type="checkbox"/> No <input type="checkbox"/> If the answer is NO, please specify why.

7. Is the form/declaration form in a format relevant to its contents?	Yes <input type="checkbox"/> No <input type="checkbox"/> If the answer is NO, please specify why and recommend how to revise.
8. What language(s) are used in the form/declaration form?	8a. Vietnamese <input type="checkbox"/> 8b. English <input type="checkbox"/> 8c. Vietnamese and English <input type="checkbox"/> 8d. Other languages <input type="checkbox"/> Do you have specific recommendation on the language(s) used in the form/declaration form? If Yes, please specify.
9. Is the form/declaration form applied nationwide or locally?	Nationwide <input type="checkbox"/> Locally <input type="checkbox"/> If the answer is "locally", does the form need to be standardized to apply nationwide? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please specify how to standardize.
10. Is the form/declaration provided free of charge?	Free of charge <input type="checkbox"/> With charge <input type="checkbox"/>
11. Are there any complaints or comments on the complexity and troublesomeness of the form/declaration form?	Yes <input type="checkbox"/> No <input type="checkbox"/> If "Yes", please summarize the comments:
<b>IV. Recommendations</b>	
12. This form/declaration form (Check only one recommendation)	
<input type="checkbox"/> should be maintained without change. →	
<input type="checkbox"/> should be maintained with revisions that are clearly specified →	Specify revisions.
<input type="checkbox"/> must be abolished. →	
13a. Person who fills out this form (officer or agencies) in case TFs and PCs may need to contact in the stage of control.	Name: _____ Telephone: _____
13b. Controller (who directly check this form) in case STF may need to contact in review stage.	Name: _____ Telephone: _____

**SENADA – Indonesia Competitiveness Program**  
BRI II Tower, 8<sup>th</sup> Fl, Suite 805  
Jl. Jendral Sudirman No. 44 – 46  
Jakarta 10210  
[www.senada.or.id](http://www.senada.or.id)