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Regulatory Reform: Challenges and Prospects of Implementing RIA in Indonesia

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REGULATORY REFORM: CHALLENGES AND PROSPECTS OF IMPLEMENTING RIA IN INDONESIA

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Using Regulatory Impact Analysis to Improve Transparency and
Effectiveness in the Rulemaking Process
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SYSTEMATIC

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I. INTRODUCTION

- A. Reformation Era which started from the year of 1998 marks the New Era in Regulatory Reform in Indonesia as Indonesia become more democratic and decentralized.
- B. Existing Regulatory Conditions in general: hyper-regulated; overlapping; contradictive; disharmonious; un-synchronous; un-implementable; inconsistent; and multi interpretation. Conflicting regulations both vertically (between central regulations and local regulations) and horizontally (among different sectors) still exist.
- C. From 2001-2009, from the total of 13.387 regulations, 3513 regional regulations were recommended to be revoked, while 1878 were actually revoked as it create high-cost economy and in contradiction with higher level of regulations. For the year of 2010, 407 regional regulations were revoked.
- D. Problematic regulations create legal uncertainty and have caused negative impact of towards Business Environment and Investment Climate .

II. BRIEF OVERVIEW OF REGULATORY REFORM IN INDONESIA

- A. Some initiatives for Regulatory Reform in: Governmental agencies (Bappenas/ National Development Planning Agency; Ministry of Home Affairs; Ministry of Finance; Ministry of Law and Human Rights; BPHN/national law reform agency with its Prolegnas/national legislative program; Baleg/legislative body of the parliament); Donor Countries (World Bank, UNDP, Asia Foundations, USAID, JICA Project Team)and Non-Government Initiatives (KPPOD, YPID, CRR, etc)
- B. Legal Framework for Regulatory Reform: Law No. 10 of 2004 on the Formation of Laws and Regulations; Law No. 32 of 2004 on Regional Administration; Law No. 28 of 2009 on Regional Taxes and Requisitions; Presidential Regulation No. 61 of 2005; Presidential Regulation No. 68 of 2005; Presidential Regulation No. 1 of 2007; etc.
- C. The Approaches for Regulatory Reform: Existing and Future: Simplifying Regulations (Inventory, Identification, Classification, Analysis and Action Plan)
- D. Existing available Tools to conduct Regulatory Reform: RIA (Regulatory Impact Analysis); ROCCIPPI (Rule, Opportunity, Communication, Interest, Process and Ideology); REGMAP (Regulatory Mapping and Review); MAPP (Metode Analisis Peraturan Perundang-undangan); MAKARA (Metode Kerangka Regulasi).
- E. A special tools for regulatory analysis have been introduced and consulted by Bappenas to Provinces, Regencies, Municipalities, Mayoralties to conduct self assessment to problematic or indicated problematic regulations for further follow-up, either revision, revocation, amendment or improvement.

III. REASONS WHY INDONESIA ONLY USING PARTS OF RIA

- A. RIA was introduced in Indonesia since 1990's by some donor countries in cooperation with some government agencies, NGO's and local governments, but limited in its scope, therefore the public in general still lacks of understanding about RIA and its interdisciplinary approaches (regulations are mostly prepared by bureaus/sections of legal affairs)
- B. Though partial, but RIA is already implemented in certain Governmental Agencies such as the Ministry of Trade (RIS on VAT Elimination of Cocoa Bean and Policy of Rattan Business Management/Arrangement) and in several regional administration (such as Pare-Pare)
- C. Perception that RIA is very complicated, high-cost and time consuming (for example the allocated time to review regional regulations is only 14 days for each regulation);
- D. Institutional Issues (no clear institution in charge of leading and coordinating regulatory reform)
- E. Some levels of regulations, such as Laws and Regional Regulations are formulated through political process which in many ways fragile for compromising and accommodating political interests rather than the interest of the people/community at large
- F. The low level of quality of legislators, both at central and regional level, contribute to low quality of regulations both at national and local level
- G. Lacks of commitment and funding supports for a high quality regulations

IV. CHALLENGES AND OPPORTUNITIES FOR IMPLEMENTING RIA IN INDONESIA

A. CHALLENGES

B. PROSPECTS

IV.A. CHALLENGES

1. There are still some perception that regulatory issues are only the concerns of officials bureaus/section of legal affairs and not be seen as an interdisciplinary approaches that covers: public policy; economic; environmental ; social and cultural considerations
2. Though the quality and quantity of Human Resources are still low, but no clear capacity building program and carrier- path development plan for personnel in charge of formulating and reviewing laws and regulations
3. Lacks of facilities and budget to support the implementation of RIA
4. In the era of Regional Autonomy, the authority to formulate regulations are also at regional level which sometime do not refer to higher regulation at national level , since there is no sufficient references on higher regulations. The existing regulatory databases are not yet designed as a comprehensive, integrated tools for regulatory formulation and review
5. The abstention of a strong and influential body/agency to coordinate and supervise regulatory reform by implementing RIA
6. The fact that the territory of Indonesia consist of more than 17000 islands, 33 provinces and 500 municipalities/mayoralities which create difficulties and complexities in standardizing regulatory reform by implementing RIA

IV.B. PROSPECTS

1. The Political will to implement Regulatory Reform is already formulated in the National Medium -Term Development Plans (RPJMN) of 2010-2014 and therefore need to be implemented consistently;
2. Some leading and strategic government agencies such as: The Coordinating Ministry for Economic Affairs and in particular National Development Planning Agency (Bappenas) have taken some initiatives in the process of developing a transitional phase toward implementing RIA by developing and introducing Model analysis to existing (MAPP) and future (MAKARA) regulations. This model analysis have adopted internationally recognized principles of good regulations.
3. Ministry of Trade have developed and implement elements of RIA in their process of formulating regulations relevant to trade (for example in regulating VAT Elimination of Cocoa Bean and formulating Policy on Rattan Business Management/Arrangement)
4. At least two municipalities namely Pare-Pare and Sragen have implemented RIA in Formulating their Regional Regulations
5. As several ministries and regional administrations have implemented RIA in their regulatory formulation process, the good practices of RIA may spread into other agencies and local administrations

V. THE WAY FORWARD

- A. Strong commitment and understanding on the Regulatory Reform concept from the head of government to create a better quality of regulation and to support economic development is very crucial/ important and become a basic requirement
- B. The existence of a high level institution with the main task of coordinating the implementation of Regulatory Reform is required
- C. The need to improve coordination mechanism among different sectors in any regulatory formulation process;
- D. The need to consider the adoption common practices and best practices of RIA in other countries as benchmark for further development and possible implementation of RIA in Indonesian Context
- E. The need to conduct continues capacity building program both to governmental officials, legislators, researchers, academician and civil society
- F. The need for financial support (budgets) from the government to conduct Regulatory Reform and to implement its recommendations
- G. The need for an incentive and disincentives scheme in implementing Regulatory Reform

THANK YOU

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