

CHAPTER 1.5

REGULATORY STRUCTURE

1.5.1 The need to understand regulations

Foreign development workers and consultants working in Indonesia need to have a basic grasp of the legislation and regulation affecting their professional fields, as they would if working in their countries of origin. The need is underscored by the structure of the Indonesian regulatory system, especially in the field of Government Administration. Regulations in Indonesia have a complex hierarchy, beginning with the Constitution of 1945 (*Undang-Undang Dasar* or Basic Law). Beneath the Constitution are a range of increasingly more specific regulations issued by decreasingly high ranking officials and bodies. The working situation is thus regulated by a complex series of documents ranging from laws (*Undang-Undang*) which usually apply to all persons, to circular letters or instructions issued by senior public servants which apply only to specific sectoral or sub-sectoral activities carried out by public servants. In the regions, note must also be taken of regional regulations passed by the level 1 or 2 assemblies, gubernatorial decisions or instructions as well as local circular letters and instructions.

1.5.2 The hierarchy of regulations

The broad hierarchy of national level regulation is as follows:-

<i>Undang-Undang Dasar 1945</i>	The 1945 Constitution - Can only be changed by the MPR
<i>Undang-Undang</i>	Public Laws - Made by the DPR, ratified by the Minister for the State Secretariat and the President
<i>Peraturan Pemerintah</i>	Government Regulations - Made by the DPR and ratified by the Minister for the State Secretariat and the President
<i>Keputusan Presiden</i>	Presidential Decision (or decrees) - Issued by the President
<i>Instruksi Presiden</i>	Presidential Instruction - Issued by the President
<i>Peraturan Menteri</i>	Ministerial Regulation - Issued by Ministers
<i>(Surat) Keputusan Menteri</i>	Ministerial Decision (or decree) - Issued by Ministers
<i>Instruksi Menteri</i>	Ministerial Instruction - Issued by Ministers
<i>(Surat) Keputusan Direktur-Jenderal</i>	Director-General Decision - Issued by Directors-General

<i>Instruksi Direktur-Jenderal</i>	Director-General Instruction - Issued by Directors-General
<i>Surat Edaran Direktur-Jenderal</i>	Director-General Circular - Issued by Directors-General

Below these levels instructions and decisions will also be issued by Directors usually in the form of a *surat* or letter.

To date no change has been made to the Constitution, although it carries provision for this to happen. Furthermore, the time periods required to draft, read and enact public laws and government regulations can often be considerable. The tendency is, therefore, for many decisions to be made by high ranking officials. Decisions hold the force of law. *Undang-Undang* produce increasingly detailed regulation at the lower levels. The higher the issuing official the more powerful the regulation or decision. There is a corresponding tendency for regulations to be made from the bottom of the system upwards, with lobbying from public servants to raise the status of a regulation to the next level in the hierarchy. Sectoral decisions may thus eventually join with other decisions to form a government regulation authorised by the President after ratification by the DPR. All regulations, however, will have justification or precedent from higher laws or regulations.

1.5.3 The Form of Regulations

It is useful to examine the form of typical Indonesian Government regulations, as this both illustrates the use of precedence, and provides a framework from which specific regulation can be read and understood.

Figure 5.1 gives an example of the form used for *peraturan pemerintah* or government regulation. Most types of regulation use a similar format.

1.5.4 Where to find out about regulations

The majority of Indonesian regulations and laws are not available in English, so it is important, where reference to them is required by foreign project staff, and where understanding of *Bahasa Indonesia* is insufficient, that an accurate translation be made. Appendix 1 of this volume gives some of the more prominent laws and regulations likely to be of importance to project staff. This is by no means a complete list. It is important to establish with Indonesian counterpart staff at an early stage, just which regulations are crucial to the operation of the project. Counterpart staff often possess copies and photocopies are usually possible. In addition, regulations can be obtained from national departmental bookshops, or from bureaux of public relations or law in the secretariats-general of the national departments. A further source would be the directorates-general from which the regulations have emanated.

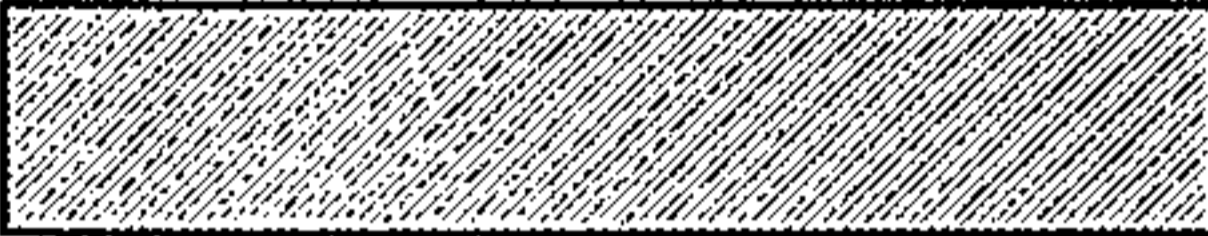
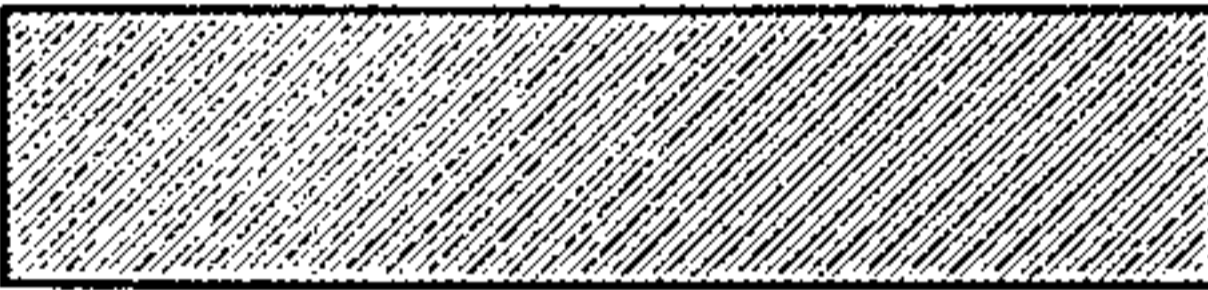
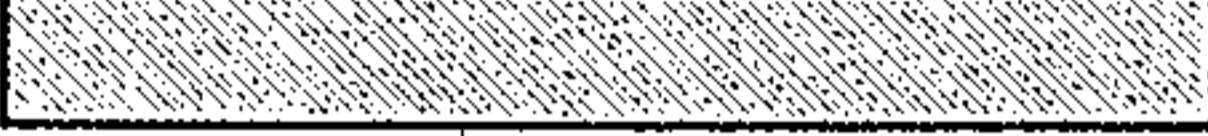
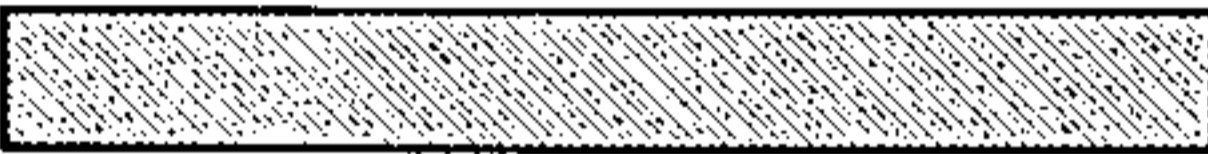
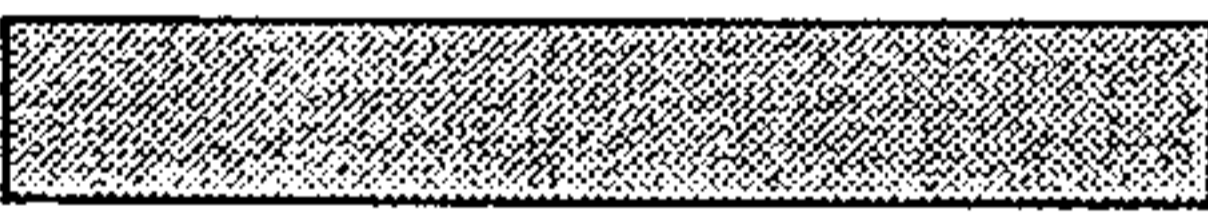

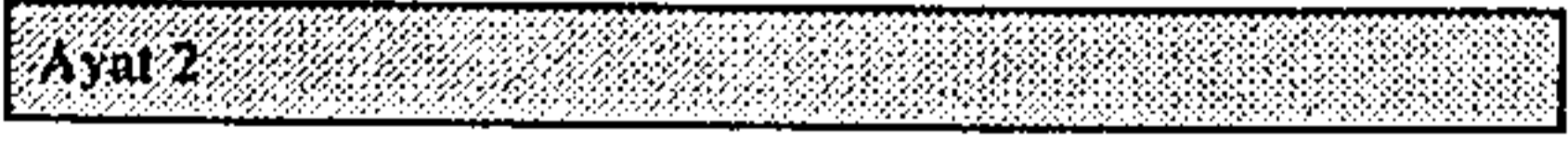
EXPLANATION	EXAMPLE	NOTES
Type of regulation	PERATURAN PEMERINTAH REPUBLIK INDONESIA	Government Reg'n
Number & Year	Nomor 5 Tahun 1990	5 of 1990
Date of Issue	Tanggal 12 Februari 1990	12/2/90
"About"	Tentang	
Regulation Subject	PERUSAHAAN UMUM PERUM JASA TIRTA	Jasa Tirta Company
Originating Official	PRESIDEN REPUBLIK INDONESIA	The President
"Considering:"	Menimbang: a.  b. 	Annotated reasons for introducing the regulation
"Remembering:"	Meningat: 1.  2. 	Annotated list of regulations that provide precedent
"It is decided:"	Menetapkan: 	Statement of title
CHAPTER 1	BAB 1	
Paragraph 1	Pasal 1  	Main body of the regulation (often in several chapters)
Clause 1		
Clause 2		

Fig.1.5.1 An example of an Indonesian Regulation

1.5.5 National and regional regulations

The Constitution states:-

"The State of Indonesia shall be a unitary state which has the form of a Republic".

This means that Indonesia does not espouse federalism. It is often said that federalism would be a hard system to operate in a country with the geographical, cultural, religious, social and economic diversity of Indonesia. The internal problems that the country experienced in the 1950's illustrate the point. Local uprisings in Sumatra, Java, Sulawesi and Maluku against the central government raised the spectre of regional disintegration, and more positively provided a major impetus to the stated aims of promotion of regional autonomy and of equitable development throughout the archipelago.

However, the Constitution also states:-

"The division of the area of Indonesia into large and small regional territories together with the structure of their administration, shall be prescribed by Statute, with regard for and in observance of the principle of deliberation in the governmental system of the State, and the traditional rights in the regional territories which have a special character."

This underlines the requirement for regions to be able to make their own regulations, through the DPRD assemblies. But it also indicates that regional regulations must be based on national regulation, and must be approved by national authorities.

1.5.6 Organisational structure and regulation

All organisational structures in the Government of Indonesia system are specified by regulation. It is always useful to obtain the regulations that affect the specific GOI units with which an overseas assisted project works. Some project leaders stipulate that organisational reports be made at the commencement of project activity. These would include an examination of the structures of GOI units. The Government of Indonesia abounds with organisational charts, and they are always readily available. It is important, however, to obtain the official versions that are appended to the regulations that set up the structures. These should be the basis for initial study, although, as in any organisation, de facto alterations may have been made since the regulation was issued. It is useful to compare these with the situations reported by counterparts. Variations can exist to cater for unfilled positions, changes to activities etc.

For workers in a particular sectoral field it is useful to obtain a copy of the regulations that establish the structures, roles, duties and functions of the national departments working in that sector. Translations should be made of the specific sections of interest.

These will help to clarify sources of information at the national level. The following are examples of regulations that define departmental structures, available from Departments concerned:-

Agriculture	Nomor 560/Kpts/OT.210/8/1990
Education	0222a/O/1980 to 0222h/O/1980
Forestry	116/KPTS-II/1989
Public Works	211/KPTS/1984

It should be noted that the structures of the regional *kanwil* offices are described in the national departmental structure documents. *Dinas* structures are prescribed in regulations issued by the Level 1 and 2 governments in the regions. However the form of organisation to be followed by *dinas* offices always follows regulations issued nationally (a reflection of the unitary state). This will usually mean that reference is made to both standard regulations on *dinas* structure issued by the Department of Home Affairs (eg. *Kepmendagri 363, 1977*) and to specific regulations made by sectoral departments concerning the form of organisation required for handling sectoral interests in the regions. There are sometimes a number of types of *dinas* structure, depending on the size and advancement of the region concerned. Whilst the structure is determined locally, it must be approved by the Minister of Home Affairs and the sectoral department concerned. The structures of regional secretariats (*sekwilda*) under the governors and *bupatis* are also determined locally by the respective level of DPR. They require the ratification of the Minister of Home Affairs.

All of these documents carry somewhere in the title the words, "*Tentang Organisasi dan Tata Kerja.....*", which translates as "Concerning the organisation and management (literally work system) of ...". The Government of Indonesia is logical in the way it specifies the forms of organisations. This is so for both national and regional units. With little variation the form is as follows:-

The regulation will start with the basic duty (*tugas pokok*) of the complete organisation. This will be followed by a list of the first level divisions in the organisation. Each of these first level divisions will then be treated in turn. The basic duty of the division will be stated, followed by a list of its functions (*fungsi*). The functions are a more detailed statement of the basic duties of the division. This will be followed by a list of sub-divisions, for each of which, in turn, the duties and functions are given. This pattern is repeated until the lowest units are reached within the sub-division. A treatment of the next sub-division is given in a similar manner until all sub-divisions in the division have been described. Then on to the next division, and so on. Once a few of the basic words have been grasped the form is easy to read, if a little repetitious.

1.5.7 Coordination and regulation

The issue of how to coordinate inter-sectoral activity is a thorny one in the GOI system. The coordination of inter-sectoral activity in the regions, or of inter-regional activity is clearly stated as being in the scope of national government. The current thinking is that this requires Joint Ministerial Decrees/Decisions. In *Bahasa Indonesia* these are known as *surat keputusan menteri bersama*. These can take a long time to bring about as they require negotiation of the various departmental roles to be taken in the activities concerned.

The impetus for obtaining *surat keputusan menteri bersama* will usually have to come from a non-sectoral agency, such as *Bappenas*. The resulting document will have to be considered by all relevant parts of each of the departments concerned, before joint wording of the document is agreed by all parties. After this, the Ministers concerned will agree to issue the document, each department issuing a number for it in their own sequence.

Overseas project staff can find themselves locked into problems caused by a lack of clear directive on project coordination. This is especially the case if the project lies in the sectoral areas of more than one department and those departments cannot easily agree to coordination mechanisms.