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Draft proposals: Strengthening legislative drafting capacity in Indonesia

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DRAFT PROPOSALS: STRENGTHENING LEGISLATIVE DRAFTING CAPACITY IN INDONESIA

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INTRODUCTION

Reformasi poses new challenges to Indonesia's law-making system, especially to its drafting and bill-enacting institutions. The drafting system (especially within government) has produced a host of bills that look towards institutional transformation consistent with the demands of *reformasi*. The DPR has enacted a number of them. Actual institutional change on the ground has not widely ensured; some bills have proven inconsistent with good governance; and recently, these bills have become caught in a legislative logjam. To transform the Indonesian institutions that replicate poverty, vulnerability and poor governance for most Indonesians, that law-making system must produce many more laws, and much more effective ones.

The relative ineffectiveness of many *reformasi* laws seems to arise in part from the inappropriate design of their detailed provisions. Many bills, frequently demanded by international donors, track foreign models; many constitute compromises between power positions; few drafters seem to have a methodology that guides them in making a detailed investigation of the relevant Indonesian circumstances within which the new law will function.

Like legislatures elsewhere, DPR in principle holds the legislative power. In principle, it has opportunity to assess a bill before enactment, and, if it will likely prove ineffective or conducive to poor governance, to amend or reject it. That it has so frequently enacted bills that failed in their seeming purpose to induce institutional transformation testifies to the relative incapacities of members and staff to assess bills in terms of their potential for beneficial; institutional change.

Indonesia seems set on a program of relative devolution of power to regions and localities. Experience with decentralization and devolution elsewhere teaches that without drafting capacity, those steps towards devolution will likely be no more than sound and fury, signifying nothing. Government exercise state power

through laws. Without capacity to draft effective laws consistent with good governance, the regions and localities everywhere prove unable to exercise those portions of state power devolved upon them.

This Proposal suggests a training program simultaneously to draft priority laws for *reformasi*, and in the process, to develop a self-sustainable system for training relevant officials, drafters, DPR staff, DPR members, and DPRD staff and members to draft *effective* transformatory laws that resonate with good governance. That requires a legislative theory and methodology that guide a drafter to draft, and a member of a legislature to assess, a bill in terms of *reason informed by experience*. We set out such a theory and methodology in an article that we annex to this proposal.

This section first discusses objectives and general strategy, second, alternative sets of activities, and finally a very tentative budget.

A. OBJECTIVES AND GENERAL STRATEGY

This proposal seeks to train relevant Indonesians in using a theory and methodology for developing well-designed, carefully drafted laws (see Box) likely to induce in Indonesian institutions effective transformations consistently with good governance, drafted defensively against corruption. Its basic strategy contains the following moves:

1. As soon as may be, the Seidmans come to Indonesia to lead a three-week workshop in legislative theory and methodology. They will first conduct a two-day crash program for eight University teachers, who will; serve as facilitators at the three-week workshop. At the three-week workshop, the participants, as many as seventy-five in number, will include officials from relevant line ministry legal bureaus, and drafters from MoLL, SEKNEG, and DPR drafting and research staff. They will be organized into teams of approximately six to eight people each, sitting at separate tables. Each team (or 'table') will undertake to draft a priority bill as selected by relevant Indonesian officials, and write a research report (or extended elucidation) for the bill. For the last week of the workshop, domestic or foreign consultants will conduct a one-week seminar in foreign law and experience relating to the bill being drafted by each table.
2. As soon as may be, the Seidmans will conduct a two-week workshop

in assessing legislation for deputies.

3. As soon as may be, but not later than September, 2001, two members of each of the law faculty staffs of UI and three other selected Indonesian universities to come to BU for a four-month intensive course in legislative drafting.
4. On their return, these faculty members will as part of their faculty responsibilities, teach legislative drafting courses to university students.
5. Through the appropriate Institute, the returned UI faculty members will arrange and teach a series of short (about two- or three week) courses in legislative design and legislative techniques for MoLL, Legal Bureau, DPR staff and SEKNEG members, and representatives from selected NGOs, until all present MoLL and Legal Bureau drafters have taken the course. For this they will be paid an honorarium as determined by the donor agency.
6. Through the Institute, the returned UI faculty members will arrange and teach a series of short courses on assessing legislation for deputies, also for an honorarium.
7. The returned members of the faculties of three regional universities will arrange and teach analogous courses for regional drafters and for regional deputies.