

[LEGISLATIVE DRAFTING MANUAL]

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CENTER FOR LAW AND GLOBAL JUSTICE**

INTRODUCTION

This textbook is the culmination of [how many?] years of work on legislative drafting education by the University of San Francisco (USF) in Indonesia. Funded by the United States Agency for International Development (USAID), the university's Center for Law and Global Justice began in [year] to train professors and other professionals in legislative drafting, specifically the legislative drafting theory developed by Professors Ann and Robert Seidman of the Boston University School of Law.

The University of San Francisco's initial program was based in [Denpasar?], but expanded to [Jakarta?], [_____], and [list other LD locations], in [year(s)]. By 2002, the program had trained [insert number of Indonesian LD graduates] Indonesian Government officials and other professionals. With [insert number of LD centers; number should match number of locations, above] legislative drafting centers in operation, the university turned to the development of a curriculum that could be taught in Indonesian universities. Early on, the University of San Francisco decided to make the curriculum multidisciplinary in order to ensure that an understanding of creating social change through the law was not reserved only for lawyers likely to write laws, but was also available to economists, sociologists, foresters, and agriculture specialists responsible for implementing the law and for drafting regulations to carry out the law.

The curriculum was developed by a team of legislative drafting center graduates and professors from February through July 2003. The team, which included [insert names of curriculum developers (with official titles or positions, if applicable), in order, as appropriate], began by developing a general outline for the course. Throughout February and March 2003, the professors "test taught" the curriculum to volunteer students at Udayana University in Denpasar, Bali. After teaching each lesson, the professors reviewed evaluations completed by each student and participated in a critique group made up of other team members. Based on their experience teaching and the feedback received, each professor submitted a lesson for inclusion as a chapter in this textbook.

Glenn Sarka and Mark Hamilton, the author and editor of this textbook, are both graduates of the Boston University School of Law. At Boston University, they studied legislative drafting theory and techniques under the guidance of Professor Robert B. Seidman and both served as Editors-in-Chief of the Legislative Services Program there. After receiving his law degree in 1995, **Glenn Sarka** moved to

Marquette, Michigan, in the United States, where he spent 5 years working on issues of violence against women, first as a Community Coordinator for a local battered women's shelter, then as an Assistant Prosecutor. After leaving Marquette, he served in Kazakhstan for 2 years as a Gender Issues Legal Specialist for the American Bar Association's Central and Eastern European Legal Initiative (ABA/CEELI). While in Kazakhstan, he worked closely with representatives from the government and from non-governmental organizations on a nationwide domestic violence law. After receiving his law degree in 1996, **Mark Hamilton** worked in Olympia, Washington, at the Washington State Legislature, in the United States. He then moved to Washington, D.C., where he spent about 4 years working as Assistant Legislative Counsel at the U.S. House of Representatives, drafting laws and legislation for the United States Congress. He is now a legislative consultant in Washington, D.C.

NOTE: I do not know whether you wish to include the paragraph above, with biographical information about Glenn and me. Please feel free to remove it.

The curriculum consists of a textbook and accompanying teacher's manual. The material in the textbook is based primarily on *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, by Ann and Robert B. Seidman and Nalin Abeysekere, but is also influenced by Indonesian sources. Like that book, this course is designed to enable students to identify, analyze, and propose legal solutions to social problems in a way that fosters good governance and development. This course has been designed for students and professionals in a multidisciplinary setting. Consequently, the course focuses on the mechanics of finding and forming legal solutions to social problems in broad informal terms. If teachers or students require a more in-depth explanation of the issues presented in the textbook, they should freely consult the Seidman text and the other sources cited at the end of each chapter.

ACKNOWLEDGMENTS

This book is based primarily on *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, by Ann and Robert B. Seidman and Nalin Abeysekere. Their manual was originally written in English and has now been translated into numerous languages, including Bahasa Indonesia.

Robert B. Seidman is Professor Emeritus of Law and Political Science at the Boston University School of Law, where he has been a distinguished member of the faculty since 1972. **Ann Seidman** is an Adjunct Professor at the Boston University School of Law. Ann and Robert Seidman are Co-Directors of the Boston University Program on Legislative Drafting for Democratic Social Change. The Seidmans, who are married, have served as chief technical consultants to United Nations-sponsored programs to foster economic reforms and strengthen legislative drafting in Asia, Africa, and Eastern Europe, including Indonesia, Sri Lanka, the Lao P.D.R., Bhutan, Nepal, Mozambique, South Africa, Kazakhstan, and Estonia. They have also, together and separately, written and edited numerous books and articles on law and development and comparative law of the Third World and transitional worlds.

Nalin Abeysekere has served in the in the Legal Draftsman's Department in Sri Lanka since 1971 and has been the Legal Draftsman for Sri Lanka since 1984.

THE MATERIALS

The curriculum consists of a textbook and teacher's manual. The textbook includes several sample social problem scenarios. Each scenario provides enough information on which to base a student research paper and proposed solution. The scenarios are not meant to replace student identification and compilation of their own research on actual social problems in their communities, but are meant to be used when lack of either resources or access to information makes using actual problems impractical.

Teaching Note

Remember, the recommended instructional outline generally follows the order of the materials presented in the text. The Teaching Notes throughout the text of this book should help you generate class discussion and help answer student questions.

It is important at the outset for the instructor to choose whether students should complete research reports on actual problems in their communities or should work on the scenarios provided in the textbook. If actual problems are used, you should ensure that the problems provide adequate work for each student in the group. You may wish to check in advance to ensure that appropriate experts or government officials are available for interviews, etc. These social problems will be assigned to the students after Lesson 7.

OUTLINE OF THE COURSE

An outline of the intended course for which this textbook is written is below. The course should take **16 weeks to complete**. The first **8 weeks** will be taught through lectures. After a **1-week period without class**, to be used for research and preparation for the first critique group meeting, the course will resume and begin critique group sessions, which will meet for **6 weeks**. At the last week's meeting, the critique groups will each present to the class a final research report.

<u>Week</u>	<u>Duration</u>	<u>Description</u>
Week 1	__ hour(s)	Course introduction.
Week 2	1½ hours	Lesson 1 (Ch. 1). Identifying and analyzing social problems: The <i>who</i> and <i>what</i> of problematic behavior.
Week 3	2 hours	Lesson 2 (Ch. 2). Introduction to the ROCCIPI problem-solving methodology.
Week 4	2¼ hours	Lesson 3 (Ch. 3). Analyzing role occupant (stakeholder) behavior using the ROCCIPI problem-solving methodology.
Week 5	2¼ hours	Lesson 4 (Ch. 4). Analyzing implementing agency behavior using the ROCCIPI problem-solving methodology.
Week 6	2 hours	Lesson 5 (Ch. 5). Formulating solutions, designing implementation provisions, and assessing costs and benefits.
Week 7	2 hours	Lesson 6 (Ch. 6). Data-gathering and research.
Week 8	2½ hours to 2¾ hours	Lesson 7 (Ch. 7). The research report. Assignment of course scenarios or actual social problems and explanation of critique groups.
Week 9	__ hours	No class meeting. Research and preparation for first critique group meeting.
Week 10	__ hours	Critique group meeting no. 1. [Maybe insert a description of the section(s) of the research report to be critiqued?]
Week 11	__ hours	Critique group meeting no. 2. [Maybe insert a description of the section(s) of the research report to be critiqued?]
Week 12	__ hours	Critique group meeting no. 3. [Maybe insert a description of the section(s) of the research report to be critiqued?]
Week 13	__ hours	Critique group meeting no. 4. [Maybe insert a description of the section(s) of the research report to be critiqued?]
Week 14	__ hours	Critique group meeting no. 5. [Maybe insert a description of the section(s) of the research report to be critiqued?]

<u>Week</u>	<u>Duration</u>	<u>Description</u>
Week 15	__ hours	Critique group meeting no. 6. [Maybe insert a description of the section(s) of the research report to be critiqued?]
Week 16	__ hours	Presentation of final research reports.

NOTE:

- 1. I'm not sure how long some of the classes should take. I've marked them with blank lines and in red.**
- 2. The time for Lesson 7 is in red because it may need to be adjusted, depending on what you do with Chapter 7 (in the Recommended Instructional Outline).**
- 3. Pipit, I may be confused about the structure of the course. I thought there were 8 lectures, 1 week off, then 5 critique group meetings, then the final class meeting. But having only 5 critique group meetings would leave an extra week with no lesson plan. I have filled in the gap (if there is one) by adding a 6th critique group meeting. You may need to adjust the outline, if I have done this incorrectly. [If I am wrong about the 1 week off, then you may need to adjust the text above the outline AND the text in the Teaching Notes at the end of Chapter 7, where it says: "Critique groups should begin 2 weeks after Lesson 7 (this lesson)".**

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CHAPTER 1.

IDENTIFYING AND ANALYZING SOCIAL PROBLEMS: THE WHO AND WHAT OF PROBLEMATIC BEHAVIOR

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2. Chapter objectives

By the end of this chapter, students will understand the terms (1) social problem, (2) social institution, (3) law, (4) legal order, (5) lawmaking institution, (6) implementing agency, and (7) role occupant (or stakeholder).

Students will also be able (1) to identify and analyze social problems in their own communities, and (2) to identify (A) the problem, (B) the repeated behavior, (C) the role occupants (or stakeholders), and (D) possible implementing agencies.

Teaching Notes

Recommended Instructional Outline:

Lesson 1 consists of an interactive lecture session lasting about 1 hour and 30 minutes, with one in-class assignment. There is a homework assignment at the end of the lesson.

The lecture portion of the lesson is as follows:

1. Preview of Lesson 1 (15 minutes). Preview the lesson, using the chapter outline above.

2. Lecture (45 minutes). The main lecture portion will address identification of social problems and determination of who and what behavior plays a role in creating social problems. Specifically the lesson will address the following questions:

(a) What is a social problem?

(b) What is a social institution and what role does it play in social problems?

(c) Why is it important to identify who causes, or contributes to, problematic social behavior?

(d) How does one identify whose behavior causes or contributes to the social problem?

(e) Why is it important to identify the agency responsible for implementing the policy or law?

(f) What role can the law and legal institutions play in dealing with social problems?

3. In-Class Assignment (30 minutes). The in-class assignment will deal with the problem of traffic jams.

3. Introduction

On your way to class, you may confront several situations that concern you. Maybe it is the heavy traffic making you worry that you will miss class. Maybe it is the amount of garbage in the streets or in the waterways. Maybe you are unfortunate enough to witness some type of crime, corruption, or abject poverty.

You may have even wondered, “What or who caused the traffic jam or the corruption?”, “Can anything be done to stop it?”, “Who is responsible for stopping it?”, or “How can the problem be solved?”

In this chapter, we will explore social problems like the ones you see every day as well as others that are not so obvious. We will discuss what drives society to seek a solution to these problems and how public policy or laws can be an effective tool in dealing with social problems. We will also show how to identify who may be responsible for the behavior that contributes to the social problem and what exactly the behavior is. Finally, we will show how to identify appropriate government agencies or officials to implement the policies or laws intended to ameliorate the problem.

4. What is a social problem?

Think about the situations mentioned above. The traffic jams, the garbage, the crime, the corruption, and the poverty. They all have at least one thing in common — each factual situation falls short of society’s (normative) concept of what should be (that is, the societal “norm”). The traffic should flow smoothly to ensure that citizens can efficiently attend classes or travel to work. The streets and waterways should be free of garbage to prevent offensive odors and the threat of disease. And so on. The gap between what is and what should be very often is what drives a society to take action to correct a social problem.

Only in the rare, and often dramatic or tragic, case does society formally respond to social problems that occur only infrequently. In the situations mentioned above, and in so many others, society is faced with an ongoing problem. Traffic jams happen more often than once in a while, there is more than a small amount of garbage in the stream, there is more than one corrupt official, and there are, unfortunately, too many people living in poverty. These more frequent problems are what we will focus on in this course.

(a) Definition of “social institution”

In this course, the term “social institution” must be understood in the context of social problems. Perhaps the most important common feature of the social problems mentioned in this chapter is that they are not caused simply by human behavior, but by repeated human behavior. (Certainly, there are problems that plague societies that are not caused by human behavior, such as a volcano eruption or torrential rains. Understanding and preventing such purely natural phenomenon are beyond the scope of this course.)

These repeated behaviors can be identified as patterns of behavior. For purposes of this course, people acting in these repetitive patterns (that is, repetitive human or social behavior) constitute **social institutions**.

Teaching Note

1. Discuss with the students how the definition of social institutions corresponds to traditional institutions, such as hospitals and schools. Without the buildings and uniforms they are simply repetitive behaviors — social institutions.
 2. Use the example of driving on the right/left side of the road to illustrate how institutions vary from society to society.
-

(b) Definition of a “social problem”

The term “**social problem**” means a social situation caused by repetitive patterns of social behavior that result in negative consequences and fall short of the affected society’s normative ideal.

5. What has law got to with it?

Society can, of course, respond to a social problem in many ways. For instance, society may choose to ignore the problem or appeal to a higher metaphysical power to intervene. Society often looks to the law

and the legal order to deal with the problem. It is this type of response that we will focus on in this course. In order to discuss how to make such a societal response effective, we must have common definitions of the concepts of **law** and the **legal order**.

(a) Definition of “law”

For purposes of this course, the term “**law**” means a regulation made by Government to be implemented by Government officials. Such laws include national laws, regional laws, other administrative regulations, and governmental agency procedures.

(b) Definition of “legal order”

The term “**legal order**” means all the normative systems in a state, which includes both the laws and the institutions that create and implement the laws. Traditionally, the purposes of the legal order was to make rules, enforce rules, stipulate fundamental values, and determine rights and duties. The institutions included in the legal order include the following:

- The Parliament or other legislative bodies that make the laws.
- The ministries or other executive agencies that make regulations to carry out the law and that enforce the laws.
- The courts or other judicial resources that interpret the law and provide a check on the other parts of the Government.
- The law enforcement system that actually polices society to ensure conformity with the laws and regulations.

A less-traditional view holds that the primary role of the legal order is to **induce desired social behaviors**. To design laws likely to induce such change, one must know how to answer the question, “Why do people behave the way they do in the face of rule of law?”

6. Why do people behave the way they do in the face of rule of law?

In order to answer the question, “Why do people behave the way they do in the face of rule of law?”, this important question we have to examine whether law has anything at all to do with influencing behavior. Some argue that the law is merely a prescription for how people should behave and that those who draft the laws should not be concerned about whether anyone obeys the law. Others argue that the law is a creature of the society that produced it and thus cannot serve to bring about change in its creator. A related theory holds that in order to be successful, a law must be in accordance with already existing social

patterns. Finally, “post-modernists” argue that even if law influences behavior, there are so many other factors involved that law’s influence cannot be isolated from those other influences. **A basic tenet of this course is that the law does influence behavior** — although, as we will see, traditionally the resulting behavior rarely conforms with the law’s prescriptions.

A graphic model helps illustrate why people behave as they do in the face of the law. In order to understand the model, three terms used in the illustration must be defined.

(a) Definition of a “lawmaking institution”

The term “**lawmaking institution**” means an institution that makes laws. This may include the legislative bodies, ministries, and executive agencies at any level of the Government.

(b) Definition of an “implementing agency”

The term “**implementing agency**” means an organization or individual assigned the duty to implement a given rule. Usually, the implementing agency is one or more governmental organizations or officials, but sometimes a nongovernmental entity is included or given this responsibility.

When addressing a social problem through legislation, it is essential to choose an appropriate implementing agency (or agencies) to carry out the solution to the problem. It is also important not to exclude a potential implementing agency before an appropriate legislative solution has been chosen. Sometimes, the choice of implementing agency will depend on what solution is chosen, and solutions are not chosen until a thorough analysis of the problem is completed, as set out in the rest of this book.

(c) Definition of a “role occupant” (or “stakeholder”)

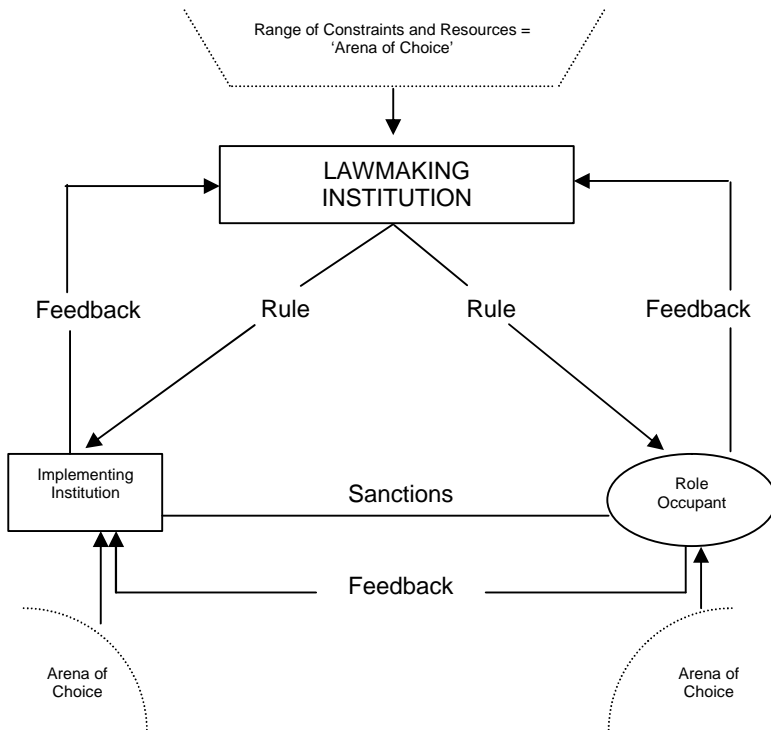
The term “**role occupant**” (or “**stakeholder**”) means a person who engages in repetitive behavior related to a social problem. After a solution or rule is decided on, the term refers to a person affected or directed by the primary directions of the rule.

Teaching Note

1. Lead a discussion on how social problems are dealt with in Indonesia. What do the students believe is the role of the legal order?

2. Ask the students for examples of behaviors that happen only because of law. What about paying taxes? Voting?

Figure 1.1. Why people behave as they do in the face of a law. (Adapted from “A model of the legal system”, by Professors Ann and Robert Seidman.)



The model illustrates how a role occupant (or stakeholder) is influenced directly by a lawmaking institution, primarily by (1) the text of the rule itself, (2) the behavior of the implementing agency, and (3) the non-legal constraints and resources of the role occupant’s (or stakeholder’s) environment.

Now that we have given you the conceptual framework we will discuss the practical matter of determining what the problematic behavior is and who the role occupant (or stakeholder) and the implementing agency are.

Teaching Note

Walk through a given law with students. What kind of feedback do lawmaking institutions and the implementing agency get? Ask the students what other factors influence behavior. They will probably identify ROCCIPI factors, which will be useful later in the course.

7. Determining what is the problematic behavior and who is responsible

The first step in determining what social problem exists is to separate symptoms from actual problem behavior. For instance, the traffic jam mentioned earlier is a symptom of underlying problematic behaviors. So too is the garbage in the streets, unexplainably wealthy public officials, and poor families. This is not to say that you should disregard the symptoms. Later in the process, when you advocate for a change in the law, or for a new law altogether, you will likely need to use the symptoms to demonstrate that the status quo is undesirable. However, in order best to begin at this stage, we must move past the symptoms and search for the problematic behavior. When we find the problematic behavior we will also discover the role occupant (or stakeholder). The implementing agency may take a bit more consideration.

Questions for Discussion

1. Who would be the lawmaking institution, likely implementing agency, and role occupant (or stakeholder) be in the case of an antilittering law?
2. What kind of feedback would you envision?

8. What is the underlying problematic behavior?

Once you have identified a social problem, how do you go about isolating the problematic behaviors? If the problem you are investigating is local and observable (for example, traffic jams, garbage on the streets), the next logical step is to visit the site or otherwise observe the problem directly. Direct observation can help you understand the problem better and help to identify individuals who could provide more in-depth information regarding the problem. If the problem is not directly observable (for example, tax or electrical regulations), indirect observation through interviews with probable experts is a good first step. In either case, it will likely become apparent that each social problem is caused by more than one problematic social

behavior. As we will see later, it is initially important to identify each of the problematic behaviors, even though the ultimate policy or law will likely deal with only one of them.

The following are examples of questions you could ask in order to identify the problematic behaviors associated with the problem of garbage on the streets.

(Note that the basic assumption is that garbage on the roads is the result of human behavior — garbage does not grow on the streets or migrate there by itself.)

1. *What* are the overt manifestations of the problem? Possible answer: Litter and food wrappers on the streets and sidewalks.

2. *Who* is directly affected by the manifestations? Possible answer: Business owners and residents in the neighborhood.

3. *Where* is it happening? Possible answer: On the streets and sidewalks around fast food restaurants.

4. *When* is it happening? Possible answer: Most often around lunchtime.

5. *Whose behavior* causes or contributes to the problem *directly*? Possible answer: Restaurant patrons who buy the food and discard the wrappers on the streets and sidewalks.

6. *Whose behavior* causes, contributes to, or permits the problem *indirectly*? Possible answer: Restaurant owners who do not provide enough trash receptacles for collecting the garbage. Note that there may be others that fall into this category. Can you think of any others?

Checklist of questions for identifying problematic behaviors

1. *What* are the overt manifestations of the problem?
2. *Who* is directly affected by the manifestations?
3. *Where* is it happening?
4. *When* is it happening?
5. *Whose behavior* causes or contributes to the problem *directly*?
6. *Whose behavior* causes, contributes to, or permits the problem *indirectly*?

Teaching Note

Emphasize to the students that this checklist is not comprehensive. These are examples of the most basic types of

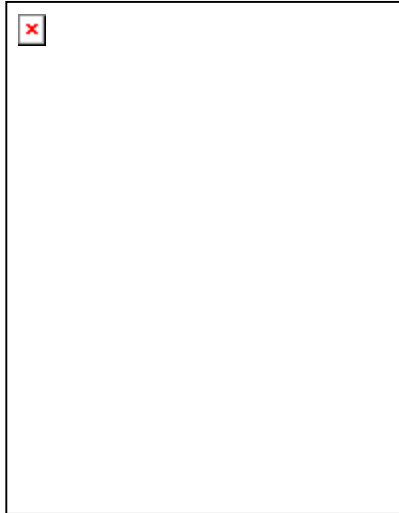
questions that are generally applicable. Moreover, not all of the questions above may always be applicable in the investigation of every social problem. Students should ask whatever questions are appropriate.

Example:
The Problem of Traffic Jams

We will use the problem of traffic jams throughout the remainder of the course to allow you to practice the techniques taught in the course. The problem is based on actual circumstances in Makassar. The supporting materials are not necessarily authentic, but should give you enough material to begin analyzing the social problem and, later, to propose a solution.

In order to simulate an actual case, you will be given the role of an eager staff member employed by the Mayor's office in Makassar. The Mayor calls you in and expresses concern about the traffic problem and gives you three letters received from town residents. The Mayor asks you to start thinking about a policy she might propose in order to alleviate the traffic problem.

Figure 1.2. Traffic jam in Makassar.



Teaching Note

We will be using the traffic jam situation for the remainder of the course to walk the students through a complete problem-solving

exercise. Use the materials for a 30-minute in-class assignment. After reading the materials, students should be able to write a clear problem statement, identify a role occupant (or stakeholder) and implementing agency, and write a strong statement identifying the problem behaviors for both. At this stage, it is important to stress the importance of community input in prompting rule development. It is also a good opportunity to foreshadow the later discussion on alternative problem-solving techniques. For instance, the writer of this letter may be prompting the Mayor to take an “ends/means” approach (that is, ‘write me a law that will prohibit parking’). Also discuss with the students who they might turn to for answers to the problem.

Figure 1.3. First letter to traffic agency.

To: Head of Traffic Agency, Makassar

Dear Sir or Madam:

I am writing to complain and ask you to organize the traffic in front of my shop. Allowing the minibuses and private cars to park all over the place causes disarray and traffic jams. Because of this, no one can get to my shop and my business is suffering. Can't you install traffic signs that prohibit parking on both sides of the road? Please also get some police to start patrolling regularly.

I hope you can do something.

Sincerely,

IWyan Wenagama

Teaching Note

The first letter provides the potential rule drafter with human interest story to use in advocating the eventual solution. It is also an excellent example of a request for the problem-solving technique taught in this course. The writer is impacted by a problem and wants some kind of solution.

Figure 1.4. Second letter to traffic agency.

To: Mr/Ms Head of the Traffic Agency, Makassar

Cc: Subdivision of Land Transportation

I am a citizen of Makassar who is very dissatisfied by the current condition of Makassar, in which I personally have been directly disadvantaged.

Last week, my daughter, who is 4 years old, had fallen from our staircase, which had caused her head to bleed. We called the ambulance immediately, but the ambulance could not reach our house quickly because it was stuck in a traffic jam. Therefore our daughter was delayed so long in getting to the hospital that she needed to be put in intensive care and is still under medical treatment today. We have spent so much money and energy that would actually be unnecessary if our daughter had been taken to the hospital quickly enough.

We really hope the government will take the concerns and awareness of the problem seriously and take responsibility for overcoming the traffic problems. We want to see more police officers on duty on the main roads so emergency vehicles, such as ambulance and fire brigade cars, will be prioritized on the roads.

Currently, the traffic condition is very unorganized. We very frequently witness traffic jams and accidents. Pedestrians cross roads improperly and public transports take and drop off passengers without paying attention to other drivers. The number of public transports operating in the town is not proportional to the road capacity. Therefore traffic jams frequently occur.

I am probably just one example of hundreds of cases of unfortunate incidents. That is why I feel very strongly that the government should be willing to take this problem seriously.

Makassar, 23 February 2003

Ahmad Subair

Teaching Note

The second letter starts pointing to a possible solution. Again prompt the students to consider alternative sources of information and ask who the implementing agency could be.

Figure 1.5. Letter to traffic police.

To: The Head of Traffic Police, Makassar

Dear Sir or Madam,

I am writing this letter to express my disappointment about the traffic condition in Makassar, which is becoming worse by the day. Especially I am disappointed after the accident I had recently. Two days ago, I was driving around Makassar Mall when the angkot in front of me suddenly stepped on the brake and instantly stopped to pick up a passenger on the side of the road. At that time, I was driving right behind the angkot and was unable to make swerve to avoid an accident because the road was very crowded, making an accident inevitable. Unfortunately, also at that time there were no police officers around that should have been able to solve the problem. That also caused disadvantages to myself (damages to my car) because of the action of the angkot driver, who refused to take responsibility and even threatened me with a sharp weapon.

The area around Makassar Mall is very unorganized, crowded, and many angkots stop at places where they are not suppose to. I really hope that more police officers can patrol more often around the area and really sanction those who are violating the rules. If not, we will certainly see more accidents on those streets. I also think that perhaps a special lane should be designated for public transports around the market and also a special lane should be designated only for private cars (prohibiting public transports on that lane). I really hope that the police will really take notice of this problem in our town.

Makassar, 24 February 2003

Suryani

Figure 1.6. Article: “Integrated Team Needed” (CITATION FOR ARTICLE).

NOTE: Insert copy of “Integrated Team Needed” article.

[Insert article HERE.]

Teaching Note

This article gets right to the point and identifies a role occupant (or stakeholder). It may be important to stress to the students that it is not always this easy and they will need to investigate further, by conducting interviews, etc.

Figure 1.7. Article: “Need Firm Action” ([CITATION FOR ARTICLE]).

NOTE: Insert “Need Firm Action” article.

[Insert article HERE.]

Figure 1.8. Article: “Government Must Think First and Shadow Terminals” ([CITATION FOR ARTICLE]).

NOTE: Insert “Government Must Think First and Shadow Terminals” article.

[Insert article HERE.]

Teaching Note

Students will refer back to these articles to find ROCCIPI factors, so you may want to foreshadow the ROCCIPI discussion by prompting the students to look to explanations of behavior.

Figure 1.9. Article: “Transport Agency is the Troublemaker”.

NOTE: Insert “Transport Agency is the Troublemaker” article.

[Insert article HERE.]

Figure 1.10 Article: “Land Transport Organization Accused” ([CITATION FOR ARTICLE]).

NOTE: Insert “land transport organization accused” article.

[Insert article HERE.]

Teaching Note

The final two articles point to an implementing agency.

9. Possible implementing agencies

There are a number of agencies to consider when choosing the appropriate implementing agency (or agencies). These include agencies or officials at various levels of government, as well as nongovernmental entities. In dealing with our traffic jam example, some of the possible implementing agencies are listed below.

(a) Mayor

The Mayor of Makassar is the person who has ultimate responsibility for execution of the municipal laws in Makassar.

(b) Makassar Town Government

The Mayor of Makassar, along with other municipal and technical institution officials, have the authority (based on the Regional Regulation and the townspeople's desires) to organize and perform official duties for Makassar.

(c) Makassar Traffic Department

The Makassar Traffic Department is the technical institution of the town government that has been given the authority by the regional government (based on the Regional Regulation) to manage land and sea transportation, the post, and telecommunications in Makassar.

(d) Makassar Traffic Department, Subdivision of Land Transportation

The Subdivision of Land Transportation is the division (or unit) within the Traffic Department that has been given the authority by the regional government (based on the Regional Regulation) to assist and manage traffic and public transport in Makassar.

(e) Makassar Tourism Department

The Makassar Tourism Department is the technical institution of the town government that has been given the authority (based on the Regional Regulation) to assist and manage tourism issues, development and tourism production, tourist activities, and tourism businesses.

(f) Land transportation organization

The land transportation organization in Makassar is a nongovernmental organization made up of a number of land transportation entrepreneurs whose the goal is to articulate the organization's interests, for the welfare and livelihoods of its members.

(g) Angkot drivers association

The angkot drivers association is a nongovernmental organization made up of a number of angkot drivers whose goal is to accommodate and articulate the interests of angkot drivers for the welfare and livelihoods of the organization's members.

Teaching Note

In-Class Assignment

Break the class into groups. Each group should (1) read the letters and articles and write a problem statement, (2) identify the role occupant (or stakeholder) and implementing agency, and (3) write a clear and concise statement of the problem behavior. Groups should present work in front of the class. Discussion should follow.

Note that it is important not to jump to conclusions too soon about the implementing agency. If the drafter decides on the police as the appropriate implementing agency at this stage, that choice may influence the drafter's ROCCUPI-based hypothesis. (That is, deciding on the police as the implementing agency at this point may lead the student to disregard a solution based on educational, as the police may be inappropriate as a community education agency.)

Figure 1.11. Progress chart.

NOTE: Insert progress chart.

[Insert chart HERE.]

Teaching Note

Use the progress chart above to let the students know where they have been and where they stand in the problem-solving process. Also make sure the students understand the terminology introduced in this chapter and the basic concepts.

10. Homework Assignment

Identify two social problems that you experience regularly. Then do the following exercises:

1. Observe the problem and identify a problematic behavior. Write one paragraph describing the behavior.
2. Identify the role occupant and propose two possible implementing agencies.

11. Further Reading

The following materials provide further information about the issues discussed in this chapter and may be referred to for additional information.

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change* (Indonesian version, 2d ed.), ELIPS II National Library, Jakarta, 2002. Pages ____–____.

NOTE (MGH): The appropriate pages for the above reference should be the pages in the Indonesian version that correspond with pages 5–20 in the English version.

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*, online at <http://www.bu.edu/law/lawdrafting/manual/>, 2003. Chapters 1–3.

M. Irfan Islamy, *Prinsip-Prinsip Perumusan Kebijaksanaan Negara*, Ed. 2, print 10, Bumi Aksara, Jakarta, 2001. Pages 1–33.

Ronny Hanitiyo Soemitro, *Studi Hukum dan Masyarakat*, Alumni, Bandung, 1985. Pages 1–54 and 118–165.

Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Sinar Baru, Bandung, [[CLICK HERE TO FINISH THIS CITATION](#)]. Pages 15–29.

Sedarmayanti, *Good Governance* (Kepemerintahan yang Baik) Dalam Rangka Otonomi Daerah, Mandar Maju, Bandung, 2003. Pages 1–29.

Solichin Abdul Wahab, Analisis Kebijakan, *Dari Formulasi ke Implementasi Kebijakan Negara*, Ed.2, Bumi aksara, Jakarta, 2002. Pages 1–15.

NOTE: All these citations should be double-checked for accuracy with respect to (1) the precise author(s), book title, etc., (2) consistency in form among the citations, (3) consistency among the citations that are repeated in other chapters, and (4) actual chapter or page references.

CHAPTER 2.

INTRODUCTION TO THE ROCCIPI PROBLEM-SOLVING METHODOLOGY

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2. Chapter objectives

By the end of this chapter, students will understand the following approaches to policymaking: (1) ends-means, (2) incrementalism, (3) pluralism, (4) criminalization, (5) copying law, and (5) the ROCCIPI problem-solving methodology.

Students will also be familiar with the terms (1) rule, (2) opportunity, (3) capacity, (4) communication, (5) interest, (6) process, and (7) ideology, as they relate to the ROCCIPI problem-solving agenda.

NOTE: In the Indonesian version, put these terms in the correct order to match the “PKKPKKI” acronym. (See note later in chapter.)

Students will be able to use reason informed by experience to analyze and explain social problems, based on the ROCCIPI problem-solving methodology.

Teaching Notes

Recommended Instructional Outline:

Lesson 2 consists of an interactive lecture session lasting about 2 hours, with one in-class assignment. There is no homework assignment in this lesson.

The lecture is as follows:

1. Review of Lesson 1 (15 minutes). Review Lesson 1 objectives. Review Lesson 1 homework. Resolve any outstanding questions the students may have from Lesson 1.

2. Preview of Lesson 2 (15 minutes). Preview Lesson 2, using the chapter outline above.

3. Lecture (1 hour and 15 minutes). The main lecture portion will address the following:

(a) Different policymaking methodologies and the strengths and weaknesses of each approach.

(b) The rationale behind the ROCCIPI problem-solving methodology.

(c) The difference between objective and subjective factors used in the ROCCIPI problem-solving methodology.

(d) Introduction to the seven factors used in the ROCCIPI problem-solving methodology.

4. In-Class Assignment (30 minutes). The in-class assignment will deal with the problem of traffic jams that was first introduced in Lesson 1.

Figure 2.1. [Insert description of figure or picture here.]

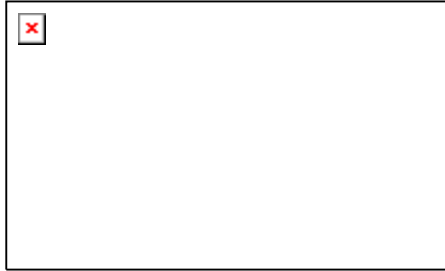


Figure 2.2. [Insert description of figure or picture here.]

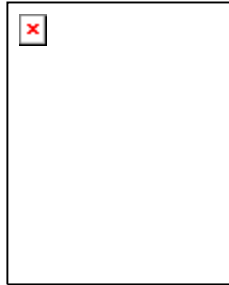
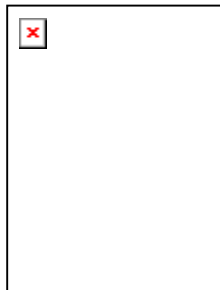


Figure 2.3. [Insert description of figure or picture here.]



3. Introduction

The previous chapter showed how to identify social problems, how to distinguish between causes and conditions, and how to determine

who — whether role occupant (or stakeholder) or implementing agency — is responsible for *what* problematic behavior.

This chapter will focus on the country-specific restraints and resources, or external factors, that influence people’s behavior, in order to provide a means for identifying and organizing the *causes* of problematic social behavior. (It may be helpful to refer back to Figure 1.1, “Why people behave as they do in the face of a law”, on page __, which illustrates how lawmaking institutions, role occupants or stakeholders, and implementing agencies interact to explain why people act as they do in the face of the law.)

Eventually, we will create a causal hypothesis that will guide you through the rest of the problem-solving process. The tool we will use in order to identify and organize this hypothesis is called the ROCCIPI problem-solving methodology or agenda. Before we discuss the ROCCIPI problem-solving agenda, we will look at the alternatives and explain why they fall short of providing effective policy.

4. Alternative approaches when deciding policy

Often when a drafter receives an assignment, there is little in the way of legislative drafting theory to guide the drafter’s work. As we discussed in Chapter 1, few theories or methodologies have been produced to guide the drafter. As a result, drafters resort to the methods that have been used in the past, even when those methods have not proven effective.

There are several approaches that are often used by policymakers in determining what course to take and what solution to propose to a particular social problem. The methodologies most often adopted are (1) ends-means, (2) incrementalism, (3) pluralism, (4) criminalization, and (5) copying law. Each of these will be discussed in more detail below.

(a) Ends-means

An “ends-means” methodology of policymaking is one in which the policymaker decides on a policy based on a stated goal or objective. Often, such goals or objectives are based on inadequate or no research into the *causes* of the underlying social problem. This approach may take the form of instructions to the drafter simply to put the policy’s goal into an acceptable legal form. This approach, which fails to address the causes of the social problem, is very unlikely to result in an effective solution.

(b) Incrementalism

Another approach often favored by legal drafters and policymakers is “incrementalism”. Incrementalism is a process of making laws or policy that seeks to make only small, incremental changes to problematic behavior.

The assumption underlying this methodology is that policymakers lack the information to make major transformation and that such transformation might therefore result in tremendous unintended costs. Incrementalism seems attractive because it appears not to risk resources on an expansive bill that may yield unpredictable results. However, incrementalism may nevertheless fail to make the necessary fundamental changes to the institutions that *cause* the social problem.

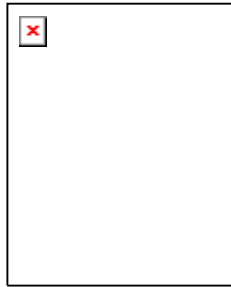
If the problematic behavior is not addressed, even small changes in law will be ineffective. But if major transformatory legislation is based on logical explanations for the problematic social behavior and is well-tailored to address the causes of the behavior, it will avert the problems imagined by incrementalists.

(c) Pluralism (or compromise)

Another approach many legal drafters and policymakers take is to try to balance interests by polling competing groups as to their support for a legislative proposal and changing the proposal based on a balancing of these interests. Pluralism can roughly be described as political bargaining.

Pluralism appears, at first glance, to be democratic. However, the compromises that take effect in the form of pluralism often balance only the interests of those with the means to influence the policymakers (by proper, and sometimes improper, methods). Pluralism may not incorporate the interests of (1) those not represented by a formal organization, or (2) those whose views are not otherwise taken into account by the policymaker. Also, the process is dependent on the legislative proposal presented. If the proposal is too narrow, or deals with inappropriate issues, a process of weighing interests is unlikely to correct the problems.

Figure 2.4. [Insert description of figure or picture here.]



(d) Criminalization and other sanctions

Another approach many legal drafters and policymakers use is criminalization and the imposition of other sanctions. Sanctions (including criminalization) merely prohibit the problematic behavior by making it illegal and by punishing those who engage in the behavior (usually by fines or imprisonment). As with pluralism, criminalization has a certain attraction. A legislative proposal based on criminalization is simple and straightforward. Some would say that it is morally unambiguous: Society decides that a certain behavior is unacceptable and therefore the State is justified in punishing the person who engages in the problematic behavior (the role occupant). Proponents of criminalization and sanctions may ask, “Given this justification, why should the State be concerned about the causes of problematic behavior or about encouraging good behavior?”

Criminalization, however, ignores the factors that may *explain* problematic behavior. This approach can also be costly if criminalization fails to change behavior while nonetheless leading to unnecessarily increased levels of incarceration without resulting in a corresponding effect of deterrence.

Nevertheless, sanctions of varying degrees, when used as conformity-inducing measures, may, after proper analysis, be included as one part of an effective solution.

The Story of the Mule

[NOTE: Insert the story of “The Mule that Couldn’t Pull the Cart and Was Punished” here. Maybe find a good piece of clipart to add to it.]

Teaching Note

There may be situations in which criminalization is the only option (for example, in the case of murder). Discuss with students why this is the case.

(e) Copying law from other jurisdictions

Perhaps the most frequently used method of policymaking is simply copying other law (“foreign law” or the law of another jurisdiction). By copying law, the drafter saves time and may have a ready-made justification for the law simply by pointing to the law’s success elsewhere.

For example, a legal drafter or policymaker deciding on banking policy might be tempted to “borrow” banking law from Switzerland, since the Swiss are known for their banking prowess. The policymaker may think that adopting Swiss banking law in Indonesia will meet with the same success as in Switzerland — and thus raise Indonesia’s system to one of the best banking systems in the world.

In reality, however, while we can all learn from foreign experience, adopting other laws wholesale is seldom as effective as it may first appear. One problem with this approach is that copying other law ignores the fact that countries have different institutions and are faced with different country-specific constraints and resources. Also, because policymakers often fail to realize the importance of understanding why certain foreign laws work in their respective countries, they do not accurately anticipate their effect in the adoptive country.

This is not to say that foreign experience is not valuable when drafting policy. In order to use it effectively, however, policymakers must thoroughly understand the problem in their own countries. If the explanations of foreign problematic behavior and your own country’s problem are sufficiently similar, we can have faith that a successful foreign policy can be successfully adopted in your own country. Often, those parts of a foreign law that correspond to similar behavior can be incorporated.

For example, the illegal sale of cigarettes to minors in both the Netherlands and Indonesia may be partially explained by store owners being unaware of laws prohibiting such sales. Thus, a provision of a Dutch law that provides a campaign to educate store owners about these laws could reasonably be expected to have a similar effect in

Indonesia. However, other parts of the law, dealing with issues in which Dutch and Indonesian behavioral causes differed could not be counted on to be successful.

Teaching Note

Make sure to discuss the importance of understanding institutions and how they may be unique to cultures and therefore require unique policy responses. How does the institution of driving on the right side of the road make American traffic laws difficult to apply in Indonesia? Emphasize that not all institutions are bad or problematic.

5. Problem-solving methodology as a guide to research

The common weakness of each of the methods presented above is that they lack, by varying degrees, a basis in reason informed by experience. The ends-means method ignores the reasons for unwanted behavior and instead begins with a solution based on gut instinct or political expediency. Incrementalism, at best, ignores the complexity and interconnectedness of factors prompting unwanted behavior. By resorting to pluralism, criminalization, and copying law, the policymaker ignores the facts as they are in the “real world” (as opposed to merely “in theory”) and seeks to appease political forces, make a moral statement, or borrow a solution that may superficially appear the same but in actuality may be a solution to an entirely different situation.

An alternative to these approaches is (1) to identify the problem as it exists, as learned in Chapter 1, (2) to analyze and explain the problem and create hypotheses based on the causes of the problem, (3) to propose solutions based on these hypotheses, and (4) to create a system to monitor and evaluate the chosen policy in order to understand which hypotheses were incorrect (and why) and to modify the policy accordingly.

In the end, what this manual proposes is a methodology that seeks to solve or prevent social problems based on reason (looking at the facts as they are in the “real world”) and experience (of those who are connected with the social problem, i.e., the role occupant or stakeholder). In this book, this process will be referred to as the ROCCIPI problem-solving methodology or agenda. (The acronym “ROCCIPI” will be explained below.)

In Chapter 1, we discussed identifying the social problem, the role occupant (or stakeholder), and possible implementing agencies. This chapter will address explanations for the *causes* of problematic social behavior by utilizing each of the ROCCIPI factors to better understand social problems. Once an explanation for problematic behavior is found, a legal drafter or policymaker can provide more appropriate solutions to the problem. To better understand this, we will use the ROCCIPI problem-solving agenda.

Teaching Note

Write the ROCCIPI factors at the front of the classroom (on the blackboard or an easel). Ask the students to come up with three synonyms for each factor. This will help them identify the factors later in their research.

6. The ROCCIPI problem-solving methodology

The ROCCIPI problem-solving methodology is simply a way to explain repetitive problematic behavior in order better to understand the behavior. By better understanding the behavior, we can begin proposing precise policy responses to change this behavior. ROCCIPI is an acronym for the seven categories or factors that provide explanations for problematic behavior. Each factor focuses on one aspect of a behavior and asks questions that will lead to a better understanding of the problem and more meaningful policy responses.

These factors are (1) rules, (2) opportunity, (3) capacity, (4) communication, (5) interest, (6) process, and (7) ideology. In the following chapters, we will discuss these factors in the context of the behavior of the role occupants (or stakeholders) and implementing agencies.

NOTE: In the Indonesian version, put these terms in the correct order to match the “PKKPKKI” acronym. (See note later in chapter.)

The seven factors can be divided into two subcategories — those that are objective and those that are subjective. The following pages will show how the ROCCIPI problem-solving agenda can be used to analyze the behaviors of the role occupant (or stakeholder) and the implementing agency.

Figure 2.5. The elements of the ROCCIPI problem-solving methodology.

R	<u>R</u>ule	(Objective factor)
O	<u>O</u>pportunity	(Objective factor)
C	<u>C</u>apacity	(Objective factor)
C	<u>C</u>ommunication	(Objective factor)
I	<u>I</u>nterest	(Subjective factor)
P	<u>P</u>rocess	(Objective factor)
I	<u>I</u>deology	(Subjective factor)

Figure 2.6. [Indonesian version:] The elements of the PKKPKKI problem-solving methodology.

P	<u>P</u>eraturan	(Objective factor)
K	<u>K</u>esempatan	(Objective factor)
K	<u>K</u>emampuan	(Objective factor)
P	<u>P</u>roces	(Objective factor)
K	<u>K</u>omunikasi	(Objective factor)
K	<u>K</u>epentingan	(Subjective factor)
I	<u>I</u>deologi	(Subjective factor)

Now we will address the differences between subjective and objective factors and discuss each factor in the ROCCIPI problem-solving agenda.

(a) Objective factors

Five of the factors in the ROCCIPI problem-solving agenda are objective factors — that is, factors that may be measured or compared in a standard or quantifiable manner. Examining these factors when trying to explain a behavior can lead to some subtle but surprisingly powerful explanations for behavior. These five factors are (1) rule, (2) opportunity, (3) capacity, (4) communication, and (5) process.

NOTE: List the factors in the order that is appropriate for the language and acronym used.

In English, use “(1) rule, (2) opportunity, (3) capacity, (4) communication, and (5) process” — from “ROCCIPI”.

In Indonesian, use “(1) peraturan [‘rule’], (2) kesempatan [‘opportunity’], (3) kemampuan [‘capacity’], (4) proses [‘process’], and (5) komunikasi [‘communication’]” — from “PKKPKKI”.

(1) Rules

The term “**rules**” most often refers to law, rule, or social norm that affects a role occupant (or stakeholder) and contributes to the problematic social behavior.

Some examples of ways in which the rules contribute to the problem are (1) laws that are vague or ambiguous, (2) laws that permit or require the problematic behavior, (3) laws that do not address the causes of the problematic behavior, (4) laws that do not provide for accountability in their implementation, and (5) laws that grant too much discretion in their implementation or that too greatly restrict discretion.

(2) Opportunity

The term “**opportunity**” refers to the *circumstances, occasion, chance, or probability* that a role occupant (or stakeholder) has to engage in the problematic social behavior or to obey or disobey a law, rule, or social norm.

NOTE: For purposes of translation, the word “chance” used here does not refer to ‘luck’ or ‘fortune’.

Teaching Note

Ask the students to give examples of opportunity to engage in problematic behavior or to obey or disobey a law, rule, or social norm.

One possible example is the opportunity of governmental officials to engage in corrupt behavior (such as accepting or soliciting bribes).

(3) Capacity

The term “**capacity**” refers to the *ability (or inability) or capability* that a role occupant (or stakeholder) has to engage in the problematic social behavior or to obey a law, rule, or social norm. Capacity includes any obstacles that may impede or prevent the role occupant’s (or stakeholder’s) ability to engage in the problematic behavior or the inability to engage in desired behavior. (The “capacity” factor often overlaps with the “opportunity” factor.)

Teaching Note

Ask the students to give examples in which a person's inability to take some action explains the person's failure to comply with the rules.

Some possible examples that address the "capacity" factor are: Inability to obtain credit, lack of expertise, and lack of transportation (for example, a farmer who cannot get produce to market).

(4) Communication

The term "**communication**" refers to the effectiveness with which a law, rule, or social norm is communicated to the role occupants (or stakeholders) affected by the law, rule, or social norm. If people do not know what actions the law permits, requires, or prohibits, how can they possibly be expected to act in conformity with the law?

(5) Process

The term "**process**" refers to *criteria and procedures* (or other pragmatic or logistical aspects) that (1) explain the decisionmaking process that leads a role occupant (or stakeholder) to decide whether to conform or not to conform to a law, rule, or social norm, and (2) encourage or discourage the problematic social behavior by a role occupant (or stakeholder). This factor is particularly important in the case of an institution (such as a governmental agency, a corporation, or other complex organization), in which the decisionmaking process is not vested in a single individual.

Teaching Note

Ask the students to describe how an institution's complexity, structure, and procedures can affect how the institution decides on its course of action — especially when it comes to obeying or disobeying the rules.

(b) Subjective factors

Subjective factors are those that are not capable of being measured by objective or quantifiable means. Subjective factors also are often the first factors we think of when explaining the problematic social behavior. The two subjective categories used in the ROCCIPI problem-solving agenda are (1) interest and (2) ideology.

(1) Interest

The term “**interest**” refers to the *incentive or motivation* (both material and non-material) for a role occupant (or stakeholder) to engage in the problematic social behavior. This is the role occupant’s (or stakeholder’s) perception of the personal costs and benefits of complying with the law, rule, or social norm. Many types of personal incentives or motivations may constitute an interest that is sufficient to affect or contribute to the problematic social behavior. This factor also includes “disincentives” that discourage good behavior.

Teaching Note

Ask the students to give examples of both material and non-material incentives that might affect a role occupant’s (or stakeholder’s) behavior. Also ask for examples of “disincentives” that discourage desired behavior.

Some possible material incentives (or benefits): Money or increased employee fringe benefits. Some possible non-material incentives (or benefits): Personal or political power or the esteem of family, friends, associates, and others.

(2) Ideology

The term “**ideology**” refers to the *values and attitudes* that shape how we look at the world and therefore shape our decisions. Ideology also encompasses any subjective motivations that do not constitute “interests”. These are the backgrounds and personal values each person brings to any set of circumstances and affect how the person behaves in the face of those circumstances.

(c) Multiple and overlapping explanations for problematic behavior

Often, more than one factor may interact to affect or contribute to the problematic behavior. For example, a rule affecting a role occupant may require the person to do something that cannot be completed because the person lacks the capacity to do so. In this example, the “rule” factor has combined with the “capacity” factor to explain the problematic behavior.

In another example, the same role occupant may be unaware of the rule because of a failure to communicate the rule adequately to affected persons. In this example, the “rule” factor has combined with the “capacity” factor to explain the problematic behavior.

These examples show the importance of carefully considering each of the ROCCIPI factors fully when seeking an explanation for problematic behavior.

(d) Explanations for problematic behavior dictate potential solutions

It is important to think of the ROCCIPI factors not only as factors that affect or contribute to problematic social behaviors, but also as factors that new policy or law should focus on to *change* the problematic behavior.

For example, if you determine that a person (role occupant or stakeholder) fails to act in a way prescribed by a law because the person simply is not aware of the law — that is, there is inadequate *communication* of the law — a logical solution would be to undertake a policy that *communicates* the law to the affected person (role occupant or stakeholder) to inform the person of the law.

Conversely, a solution that sanctions the role occupant (or stakeholder) for violating the law would be unlikely to have the desired effect, since it does not address the problem, which you have determined (in this example) to be a lack of *communication* of the law. Sanctions do not help role occupants (or stakeholders) find out about the law so that they can obey it. So in this example, sanctions are an illogical solution. The better way is to tailor solutions so that they address the explanations that you have determined by using the ROCCIPI problem-solving method.

By looking at these factors as both factors that contribute to the *problem* and factors to address when formulating a *resolution* to the problem, policymaking will be founded on analysis, logic, and reason based in experience. This type of policymaking is more likely to produce an affective solution than the alternative methods discussed earlier in this chapter.

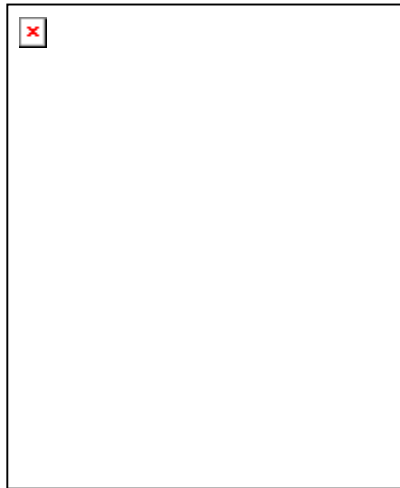
**In-Class Assignment:
The Problem of Traffic Jams**

Take another look at the letters included in Chapter 1. Identify those letters that advocate an ends-means approach to the problem and those that leave open the possibility of using the problem-solving approach.

Now imagine that the Mayor asks you to set up hearings with appropriate local interest groups regarding the traffic problem in Makassar. Individually, or in a group, prepare an outline for a memorandum to the Mayor in which you do the following:

1. Identify interest groups that might be invited to provide input on the traffic problem.
2. Educate the Mayor about the disadvantages of resorting to an ends-means approach or to pluralism (or political compromise) when deciding on policy to solve the traffic problem.
3. Propose a problem-solving approach that takes into account the experiences of all the interest groups you have identified. (Also decide who else, other than “interest groups”, you would consult in order to successfully use the ROCCIPI problem-solving agenda.)

Figure 2.7. [Insert description of figure or picture here.]



7. Further Reading

The following materials provide further information about the issues discussed in this chapter and may be referred to for additional information.

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change* (Indonesian version, 2d ed.), ELIPS II National Library, Jakarta, 2002. Pages 85–123.

NOTE: The appropriate pages for the above Seidman reference should be the pages in the Indonesian version that correspond with pages 85–123 in the English version. (This identical reference is used in Chapters 2–4.)

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*, online at <http://www.bu.edu/law/lawdrafting/manual/>, 2003. Chapter 6.

M. Irfan Islamy, *Prinsip-Prinsip Perumusan Kebijakananaa Negara*, Ed. 2, print 10, Bumi Aksara, Jakarta, 2001. Pages ____.

Ronny Hanitiyo Soemitro, *Studi Hukum dan Masyarakat*, Alumni, Bandung, 1985. Pages 1–54 and 118–165.

Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Sinar Baru, Bandung, [\[CLICK HERE TO FINISH THIS CITATION\]](#). Pages 15–29.

Sedarmayanti, *Good Governance (Kepemerintahan yang Baik) Dalam Rangka Otonomi Daerah*, Mandar Maju, Bandung, 2003. Pages 1–29.

Solichin Abdul Wahab, *Analisis Kebijakananaa, Dari Formulasi ke Implementasi Kebijakananaa Negara*, Ed.2, Bumi aksara, Jakarta, 2002. Pages 1–15.

NOTE: All these citations should be double-checked for accuracy with respect to (1) the precise author(s), book title, etc., (2) consistency in form among the citations, (3) consistency among the citations that are repeated in other chapters, and (4) actual chapter or page references.

The references to the Seidman resources (English) are correct in this chapter.

CHAPTER 3.

ANALYZING ROLE OCCUPANT (STAKEHOLDER) BEHAVIOR USING THE ROCCIPI PROBLEM-SOLVING METHODOLOGY

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2. Chapter objectives

By the end of this chapter, students will be able to analyze and explain the causes of a role occupant's behavior using the ROCCIPI problem-solving methodology. Behavior will be analyzed using both the objective ROCCIPI factors (**rules, opportunity, capacity, communication, and process**) and the subjective factors (interest and ideology).

NOTE: In the Indonesian version, put the ROCCIPI factors in the appropriate order to match the “PKKPKKI” acronym. (See note later in chapter.)

Teaching Notes

Recommended Instructional Outline:

Lesson 2 consists of an interactive lecture session lasting about 2 hours and 15 minutes, with one in-class assignment. There is a homework assignment at the end of the lesson.

The lecture is as follows:

1. Review of Lesson 2 (15 minutes). Review Lesson 2 objectives. Resolve any outstanding questions the students may have from Lesson 2. There was no homework assignment for Lesson 2, but you should prompt students to discuss how they may passively apply ROCCIPI analysis to problems they see every day.

2. Preview of Lesson 3 (15 minutes). Preview Lesson 3, using the chapter outline above.

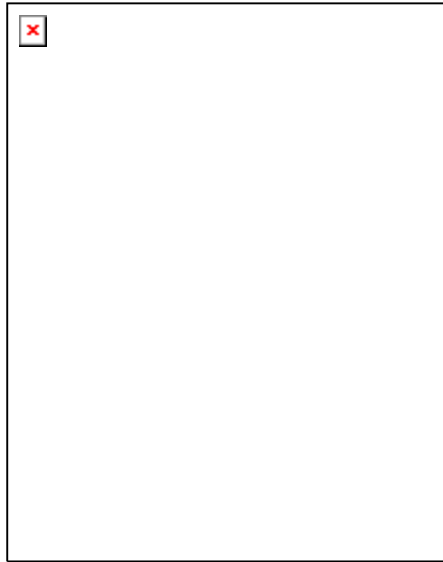
3. Lecture (1 hour). The main lecture portion will teach students to use the ROCCIPI problem-solving methodology to explain the behavior of the role occupant (or stakeholder), including the following factors:

(a) Objective factors: (1) rules, (2) opportunity, (3) capacity, (4) communication, and (5) process.

(b) Subjective factors: (1) interest, and (2) ideology.

4. In-Class Assignment (45 minutes). The in-class assignment will deal with the problem of traffic jams that was first introduced in Lesson 1. The students will work in groups to develop a report analyzing the behavior of the primary role occupant (or stakeholder).

Figure 3.1. [Insert description of figure or picture here.]



3. Introduction

The last chapter introduced the ROCCIPI problem-solving methodology (or agenda) and described how the methodology can be used to develop working hypotheses that explain problematic social behavior. This chapter will teach you to use the ROCCIPI agenda specifically to analyze the behavior of role occupants (or stakeholders) and develop explanation for the behavior. In doing this, we will look at each ROCCIPI factor individually to examine how the factor can explain role occupant behavior. We will first look at the objective ROCCIPI factors (**rules, opportunity, capacity, communication, and process**), then we will look at the subjective factors (interest and ideology). These explanations will eventually be used to develop and formulate potential solutions that are designed to address these explanations of the *causes* of problematic behavior.

NOTE: In the Indonesian version, put the ROCCIPI factors in the appropriate order to match the “PKKPKKI” acronym.

NOTE: List the factors in the order that is appropriate for the language and acronym used.

In English, use “(1) rules, (2) opportunity, (3) capacity, (4) communication, and (5) process” — from “ROCCIPI”.

In Indonesian, use “(1) peraturan [‘rule’], (2) kesempatan [‘opportunity’], (3) kemampuan [‘capacity’], (4) proses [‘process’], and (5) komunikasi [‘communication’]” — from “PKKPKKI”.

4. Using the ROCCIPI problem-solving methodology to analyze role occupants (and stakeholders)

(a) Objective Factors

Remember from the previous chapter that the objective ROCCIPI factors are (1) rules, (2) opportunity, (3) capacity, (4) communication, and (5) process. We will now examine these factors to explain the problematic behavior of role occupants (or stakeholders).

(1) Rules

The “rules” factor includes all the laws, rules, and social norms within which the role occupant (or stakeholder) behaves. It may be strange at first to examine the rules (or law) as the cause of *bad* behavior. After all, the law is supposed to express a community’s normative ideal. However, existing rules may have unintended loopholes that allow problematic behavior. Or rules may be written in such vague or imprecise language that role occupants (or stakeholders) have too much discretion. The rules may also be written in such difficult or arcane language (for instance, “legalese”) that, for all practical purposes, it is not accessible to addressees (those whom the rules are intended to govern). Thus, an initial examination of the rules that affect (or are intended to affect) each role occupant (or stakeholder) is the first step in the ROCCIPI examination of role occupant (or stakeholder) behavior.

Topic for Discussion

Where would you look, who would you talk to, and what questions would you ask in order to understand how **rules** contribute to people’s behavior?

Teaching Note

Use the discussion topics to encourage a free exchange regarding the ROCCIPI factors. Students will only get a good grasp of the factors and how they affect behavior by discussing them in relation to “real-life” situations.

(2) Opportunity and Capacity

The factors of “opportunity” and “capacity” are the objective factors (such as skills, knowledge, and access to resources) that influence behavior. In practice, explaining a problem in terms of opportunity and capacity is sometimes difficult because those factors are sometimes hard to distinguish from each other. These factors are often thought of together because a role occupant (or stakeholder) must have *both* the opportunity *and* the capacity (or capability) to engage in either the problematic or the desired (or preferred) behavior. Thus, a problem in which the role occupant (or stakeholder) has the opportunity to engage in the desired or preferred behavior, but not the capacity to engage in the behavior, would call for a solution that provides that opportunity. If the role occupant (or stakeholder) has the opportunity, but not the capacity (or capability) to engage in the desired or preferred behavior, the solution should focus on improving the role occupant’s (or stakeholder’s) capacity, which is often referred to as ‘capacity-building’.

Opportunity is the chance [NOTE for translation: ‘chance’ here is NOT ‘fortune’ or ‘luck’] to engage in the problematic behavior. Solutions to problems of opportunity will include (1) eliminating a role occupant’s opportunity to engage in the problematic behavior, or (2) providing a role occupant the opportunity to engage in the desired or preferred behavior.

Capacity is the role occupant’s ability or capability to engage in problematic or desired (or preferred) behavior. Solutions to problems of capacity will include (1) limiting the capacity of the role occupant (or stakeholder) to engage in the problematic behavior, or (2) capacity-building to improve or enhance the role occupant’s ability to engage in the desired or preferred behavior.

Consider the following example. Drafters of an education law are trying to understand why Jakarta University has such a low number of Papuan students. They discover that even though the students had the *opportunity* to attend (admissions did not discriminate on the basis of place of origin), few had the *capacity* to attend (they could not afford tuition, room and board, and books). One appropriate solution might involve increasing Papuan students’ financial ability to attend, such as through scholarships or grants targeted at those students.

Teaching Note

Distinguishing between opportunity and capacity is often difficult for students. At this point in the lesson, you may want to

present as an example students' own *opportunity* to understand the ROCCIPI agenda (it is being presented to them) as distinguished from their capacity to understand and utilize it.

When analyzing opportunity and capacity, it is important to emphasize that opportunity and capacity are *both* (1) the opportunity and capacity *to engage* in problematic behavior, *and* (2) the *lack of* opportunity or capacity to engage in the desired or preferred behavior.

(3) Communication

The “communication” factor is very important. We must ask whether the role occupant (or stakeholder) is aware of the rule or law that requires, permits, or prohibits certain behavior. What good is a rule if it is not communicated to the addressees? Often, role occupants (and stakeholders) engage in problematic behavior simply because they are unaware that there is a rule or law prohibiting it. They may also fail to engage in desired or preferred behavior because they are unaware of a rule or law permitting or requiring it.

Pro forma communication (for instance, in a parliamentary record) is rarely enough to ensure that role occupants (and stakeholders) have the information needed to behave appropriately. Effective communication, directed at the likely role occupants (and stakeholders) is needed — but often neglected — when writing laws. Thus, solutions to problems of communication will include provisions for informing those affected by the rule or law, so that they are aware of what the law or rule requires, permits, or prohibits and can therefore conform their behavior appropriately. (Note that problems of communication will rarely be the *only* explanation for problematic behavior or for the failure of a role occupant, or stakeholder, to engage in desired or preferred behavior.)

Topic for Discussion

Consider the role that communication plays in other ROCCIPI factors. Does communicating the true cost or benefit of certain behavior affect someone's interest or incentive calculation in deciding whether to engage, or to refrain from engaging, in that behavior? Does communicating the ideological implications of certain behavior better help someone behave appropriately?

(4) Process

The “process” factor looks for explanations for problematic behavior linked to procedures or processes that lead to the behavior. Have you ever been discouraged from doing something simply because it took too long or was too complicated? If so, your behavior was influenced by “process”. Process explanations are not found in every social problem, but can provide a surprisingly simple explanation for unwanted behavior.

For example, problematic behavior relating to licensing, membership, or payment of taxes can be understood by examining the process involved. Thus, a driver may have decided not to obtain a driving license simply because the procedure was unclear or unnecessarily complicated (by long bureaucratic delays or going to multiple locations to obtain the license, for instance). The complicated process involved may explain part of the driver’s failure to obtain a driving license. One part of a solution may be to simplify the process to encourage drivers to choose to obtain the license rather than to drive without a license.

Topic for Discussion

1. University life offers many examples of how process influences behavior. Is class registration overly complex and time-consuming? Does this influence student behavior in choosing courses? What, if any, improvements would you suggest to the registration process at your university?
2. Where would you look, who would you talk to, and what questions would you ask in order to understand how **process** causes drivers to pay bribes when stopped by the police for a minor traffic violation?

(b) Subjective factors

The previous chapter described the subjective ROCCIPI factors, which are (1) interest and (2) ideology. We will now examining these factors to explain the problematic behavior of role occupants (or stakeholders).

(1) Interest

The “interest” factor is often described as incentive. When analyzing problematic behavior, we need to know the role occupant’s (or stakeholder’s) material (usually monetary) and non-material incentives for engaging in the problematic behavior. Sometimes the

explanation will be one of a *lack* of incentive for the role occupant (or stakeholder) to engage in the desired or preferred behavior. Solutions for a problem of interest will include (1) eliminating or reducing the role occupant's (or stakeholder's) interest or incentive to engage in the problematic behavior, or (2) introducing or increasing the role occupant's (or stakeholder's) interest or incentive to engage in the desired or preferred behavior.

For example, we may ask whether the role occupant earns money or saves money (by reducing an expense, for instance) by engaging in the problematic behavior? If so, is there a way to increase the cost to the role occupant of the bad behavior to *discourage* the problematic behavior? Conversely, is there a way to provide monetary or other incentives to *encourage* the desired or preferred behavior?

Teaching Note

Be careful not to use too expansive a definition of interest or incentive (as some economists do). While it is a broad factor, it is not an all-encompassing factor. By explaining all behavior in terms of incentive *and* by equating incentive with monetary gain, we unnecessarily limit ourselves to a set of monetary-based policy solutions and ignore other factors that influence behavior.

For example, ask the students to explain, in terms of monetary incentive, why a mother cares for and protects her newborn child even at the risk of her own life?

In answering this question, the students may consider the mother's religious beliefs or other values and attitudes, which will lead into the next section on the ROCCIPI factor of "ideology".

(2) Ideology

The "ideology" factor refers to the values and attitudes that influence behavior (as opposed to the material and non-material incentives). These include social, political, and religious values and beliefs. These are subjective because each person's (or group's) values, attitudes, and beliefs are unique and the same values, attitudes, and beliefs may affect different individuals or groups differently.

Here are some examples of ideological explanations for "real-life" situations:

- Religious belief probably is the primary explanation or the fact that there is little or no pork consumption in Lombock.

- A prevalent local social, political, or religious ideology very likely influences the amount of money donated to the poor in a certain community.

Of course, the cause of a role occupant's (or stakeholder's) behavior does not necessarily have to fit into some already established school or pattern of ideology. For instance, ideology does not need to be identified as Muslim, capitalist, or democratic in order to explain behavior. Because of the subjective nature of ideology, and because of ideology affects different people and groups differently, it is sometimes necessary to develop non-traditional ideological explanations for a role occupant's (or stakeholder's) behavior.

Teaching Note

Be careful not to explain all behavior in terms of ideology (as some sociologists do). Like interest, ideology is a broad factor, but it is not an all-encompassing factor.

5. Using the ROCCIPI agenda to create hypotheses about role occupants (and stakeholders)

In-Class Assignment: The Problem of Traffic Jams

Now that you have an understanding of the ROCCIPI factors and how the factors relate to the behavior of role occupants (and stakeholders), you can use them to analyze, explain, and understand problematic behavior in order to create effective policy solutions.

Consider again the problem of traffic jams in Makassar. Use the materials about the problem of traffic jams from Chapter 1 (and the materials on the following pages) to fill in the ROCCIPI categories in Figure 3.2 below. Prepare an analysis of the ROCCIPI factors for the role occupant (or stakeholder) identified in the in-class assignment in Lesson 1.

Figure 3.2. Analysis of ROCCIPI factors for the primary role occupant (or stakeholder).

	Factor:	Hypothesis or Explanation:
R	<u>R</u> ule	_____
O	<u>O</u> pportunity	_____
C	<u>C</u> apacity	_____
C	<u>C</u> ommunication	_____
I	<u>I</u> nterest	_____
P	<u>P</u> rocess	_____
I	<u>I</u> deology	_____

Figure 3.3. [Indonesian version:] Analysis of PKKPKKI factors for the primary role occupant (or stakeholder).

	Factor:	Hypothesis or Explanation:
P	<u>P</u> eraturan	_____
K	<u>K</u> esempatan	_____
K	<u>K</u> emampuan	_____
P	<u>P</u> roces	_____
K	<u>K</u> omunikasi	_____
K	<u>K</u> epentingan	_____
I	<u>I</u> deologi	_____

Figure 3.4. [Insert description of figure or picture here.]

NOTE: Insert additional articles not used in chapter 2 here if it concerns the role occupant.

Figure 3.5. [Insert description of figure or picture here.]

NOTE: Insert Muktasam’s “Traffic Congestion: Dilemma in Developing Countries’ Cities”.

Teaching Note

In-Class Assignment

Break the class into the same groups as in Lesson 1. Instruct the groups to work for about 30 minutes to prepare an analysis of the ROCCIPI factors for the role occupant (or stakeholder) they identified in the in-class assignment in Lesson 1.

Then reconvene the class reconvene and ask each group to report its analysis and discuss it with the class. (The group discussions should last about 15 minutes total.)

Figure 3.6. Progress chart.

NOTE: Pipit, please insert progress chart here. Use dark outlines for the steps already covered and dotted lines for the steps not yet taken. Muktasam and Gau used the chart.

[Insert chart HERE.]

6. Homework assignment

Prepare a one-page analysis for the behavior of the role occupant you identified in your Chapter 1 homework assignment (on page ___) using the objective and subjective ROCCIPI factors.

7. Further reading

The following materials provide further information about the issues discussed in this chapter and may be referred to for additional information.

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change* (Indonesian version, 2d ed.), ELIPS II National Library, Jakarta, 2002. Pages 85–123.

NOTE: The appropriate pages for the above Seidman reference should be the pages in the Indonesian version that correspond with pages 85–123 in the English version. (This identical reference is used in Chapters 2–4.)

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*, online at <http://www.bu.edu/law/lawdrafting/manual/>, 2003. Chapters 6 and 8.

M. Irfan Islamy, *Prinsip-Prinsip Perumusan Kebijakananaa Negara*, Ed. 2, print 10, Bumi Aksara, Jakarta, 2001. Pages ___.

Ronny Hanitiyo Soemitro, *Studi Hukum dan Masyarakat*, Alumni, Bandung, 1985. Pages 1–54 and 118–165.

Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Sinar Baru, Bandung, [CLICK HERE TO FINISH THIS CITATION]. Pages 15–29.

Sedarmayanti, *Good Governance* (Kepemerintahan yang Baik) Dalam Rangka Otonomi Daerah, Mandar Maju, Bandung, 2003. Pages 1–29.

Solichin Abdul Wahab, *Analisis Kebijakananaa, Dari Formulasi ke Implementasi Kebijakananaa Negara*, Ed.2, Bumi aksara, Jakarta, 2002. Pages 1–15.

NOTES:

- 1. These Indonesian sources should be checked for accuracy with respect to (1) the precise author(s), book title, etc., (2) consistency in form among the citations, (3) consistency among the citations that are repeated in other chapters, and (4) actual chapter or page references.**
- 2. Any inappropriate references (that is, the book or material is not applicable to the lesson) should be omitted.**

CHAPTER 4.

ANALYZING IMPLEMENTING AGENCY BEHAVIOR USING THE ROCCIPI PROBLEM-SOLVING METHODOLOGY

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2. Chapter objectives

By the end of this chapter, students will be able to analyze and explain the causes of implementing agency behavior using the ROCCIPI problem-solving methodology. Behavior will be analyzed using the seven ROCCIPI factors (**rules, opportunity, capacity, communication, interest, process, and ideology**).

NOTE: In the Indonesian version, put the ROCCIPI factors in the appropriate order to match the “PKKPKKI” acronym. (See note later in chapter.) These are indicated in RED throughout the chapter.

Teaching Notes

Recommended Instructional Outline:

Lesson 4 consists of an interactive lecture session lasting about 2 hours and 15 minutes, with one in-class assignment. There is a homework assignment at the end of the lesson.

The lecture is as follows:

1. Review of Lesson 3 (15 minutes). Review Lesson 3 objectives. Review Lesson 3 homework. Resolve any outstanding questions the students may have from Lesson 3.

2. Preview of Lesson 4 (15 minutes). Preview Lesson 4, using the chapter outline above.

3. Lecture (1 hour). The main lecture portion will teach students to use the ROCCIPI problem-solving methodology to explain the behavior of the implementing agency, including the seven ROCCIPI factors: (1) **rules**, (2) **opportunity**, (3) **capacity**, (4) **communication**, (5) **interest**, (6) **process**, and (7) **ideology**.

4. In-Class Assignment (45 minutes). The in-class assignment will deal with the problem of traffic jams that was first introduced in Lesson 1. The students will work in groups to develop a report analyzing the behavior of the implementing agency.

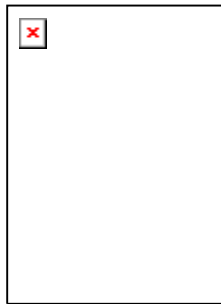
3. Introduction

In the last chapter we saw how to use the ROCCIPI problem-solving methodology to analyze the behavior of role occupant. In this chapter, we will learn to use the ROCCIPI methodology to analyze implementing agency behavior.

Figure 4.1. [Insert description of figure or picture here.]



Figure 4.2. [Insert description of figure or picture here.]

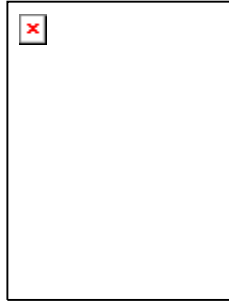


4. Using the ROCCIPI problem-solving methodology to analyze implementing agencies

(a) Rules

Rules are not only directed toward the general public, but also to the agencies that implement those rules. As with the analysis of how rules influence role occupants, pay special attention to (1) whether the rule is written with enough precision to provide guidance for the implementing agency, and (2) whether the rule grants broad discretion that (A) prevents effective implementation, or (B) permits arbitrary government decisions. Keep in mind that vague or poorly written laws can lead to ineffective implementation and abuse.

Figure 4.3. [Insert description of figure or picture here.]



Topic for Discussion

Where would you look, who would you talk to, and what questions would you ask in order to understand how a littering law could affect implementation by appropriate government agencies?

(b) Opportunity

Implementing agencies, of course, must have an opportunity to implement a law. When examining implementing agency opportunity, it is important to do more than simply state that the implementing agency has the opportunity. (For example, do not merely hypothesize, “Husbands assault their wives, therefore the police have the opportunity to implement the law against domestic violence.”)

It is important — especially in conjunction with an analysis of the implementing agency’s capacity — to thoroughly consider the opportunity factor. (For example, you might hypothesize, “In Jakarta, each month 1,400 wives complain of being beaten by their husbands and 200 of those women who complain are eventually murdered by the husband.”)

When discussing opportunity, it is also important to keep in mind what kind of agency you are dealing with. If the agency is a *reactive* agency, such as a court, the agency must wait until another agency or person brings the matter to its attention. On the other hand, if the agency is a *proactive* agency, such as a public prosecutor’s office, it may have discretion to search out cases to deal with on its own.

Topic for Discussion

Where would you look, who would you talk to, and what questions would you ask in order to understand how an implementing agency’s **opportunity** effects its ability to implement a littering law?

(c) Capacity

Capacity is a useful category for examining implementing agency behavior because agencies very often operate under monetary or bureaucratic constraints (that may, for instance, affect expertise or efficiency). This is where it is important to consider what you discovered when analyzing agency opportunity.

In the example above, the police have the opportunity to make arrests in 1,400 cases each month in Jakarta but yet do not make so many arrests. One of the reasons they may not actually make that many arrests is simply that they lack the manpower to react to so many cases. Moreover, even if the police had the manpower, they may lack the training and expertise to investigate and make the arrests effectively.

The differences between reactive and proactive agencies (discussed above) may also have an important affect on the factors of capacity and process. (For example, in the case of a public prosecutor, could the agency's limited resources — that is, its capacity — influence the decision whether to prosecute certain cases — that is, its process?)

Topic for Discussion

Where would you look, who would you talk to, and what questions would you ask in order to understand how an implementing agency's **capacity** influences how it can implement a littering law?

(d) Communication

It may seem odd that people who work for the very agency that is given the job of implementing a law may be ignorant of the law's provisions, but sometimes that happens — with negative consequences. (For example, a police officer may be unaware of a new regulation and therefore does not enforce the new law.)

It is the responsibility of the drafter to ensure that the law or policy includes language that requires agencies to inform and train all possible implementers on their responsibilities to carry out the law.

In addition, agencies very often fail to communicate the law to those affected by the law — the role occupants (or stakeholders). It is also important, if necessary, for the drafter to include language directing an implementing agency to inform those regulated by the law.

(e) Interest

When looking at interest, or incentive, as a factor influencing implementing agency behavior, consider both the collective interests of

the agency and the personal interests of the individuals within the agency.

Collective interests may include (1) increasing influence, (2) acquiring resources, and (3) protecting “turf”.

Personal interests may include (1) gaining prestige, (2) avoiding work, (3) avoiding risks (for instance, physical danger or the risk of losing a job), and (3) gaining material (monetary) or non-material rewards.

(f) Process

When analyzing implementing agency behavior, an investigation of process can yield very interesting and important results. This is because, unlike role occupants, implementing agencies are usually complex organizations — they are, in and of themselves, ‘institutions’. Implementing agency processes can be broken down into three “phases”: (1) the input phase, (2) the conversion phase, and (3) the output phase.

The *input phase* is characterized by (1) *what* issues and ideas can be introduced into the machinery of the implementing agency, and (2) *who* may introduce such issues and ideas. A statement of an agency’s jurisdiction, or rules of engagement, may give you an idea of the nature of the agency’s particular input phase.

The *conversion phase* is characterized by *how* the implementing agency deals with the information or resources it gathers in the input phase. (For example, the actions the police take after discovering a possible crime.) Questions you may want to ask are: (1) *Who* makes decisions (for instance, is the decision-maker a group or an individual), and (2) *How* do they make decisions? (of instance, are new decisions based on prior decisions, or precedent?).

Finally, the *output phase* is characterized by *what use* the implementing agency makes of the converted information or resources.

After examining these phases, it is also important to consider what “feedback process” the implementing agency may utilize. For example, how does the agency learn from its own mistakes or successes? How does the agency consider public input on the agency’s operation?

Topic for Discussion

How would you describe the three phases of implementing agency process when describing a professor’s behavior in assessing student achievement?

(g) Ideology

Agencies, like individuals, value certain ideologies. These values and attitudes are often important in explaining implementing agency behavior.

For example, otherwise non-corrupt police officers may nevertheless protect their corrupt colleagues due to an “unwritten code” that prohibits “ratting”, or informing, on another officer. Another example could be the belief, in the armed forces, that profiting from extortion is an allowable form of compensation for serving in a dangerous post.

5. Using the ROCCIPI agenda to create hypotheses about implementing agencies

**In-Class Assignment:
The Problem of Traffic Jams**

Now that you have an understanding of the ROCCIPI factors and how the factors relate to the behavior of implementing agencies, you can use the factors to analyze, explain, and understand problematic behavior in order to create effective policy solutions.

Consider again the problem of traffic jams in Makassar. Identify an implementing agency, then use the materials about the problem of traffic jams previously provided to fill in the ROCCIPI categories in Figure 3.2 below.

Figure 4.4. Analysis of ROCCIPI factors for the implementing agency.

Factor:	Hypothesis or Explanation:
R <u>R</u> ule	_____
O <u>O</u> pportunity	_____
C <u>C</u> apacity	_____
C <u>C</u> ommunication	_____
I <u>I</u> nterest	_____
P <u>P</u> rocess	_____
I <u>I</u> deology	_____

Figure 4.5. [Indonesian version:] Analysis of PKKPCKI factors for the implementing agency.

Factor:	Hypothesis or Explanation:
P <u>P</u> eraturan	_____
K <u>K</u> esempatan	_____
K <u>K</u> emampuan	_____
P <u>P</u> roces	_____
K <u>K</u> omunikasi	_____
K <u>K</u> epentingan	_____
I <u>I</u> deologi	_____

Teaching Note

In-Class Assignment

Break the class into the same groups as in Lessons 1 and 3. Instruct the groups to work for about 30 minutes to prepare an analysis of the ROCCPII factors for the implementing agency they identified in the in-class assignment in Lesson 1.

Then reconvene the class and ask each group to report its analysis and discuss it with the class. (The group discussions should last about 15 minutes total.)

Figure 4.6. Progress chart.

NOTE: Pipit, please insert progress chart here. Use dark outlines for the steps already covered and dotted lines for the steps not yet taken. Muktasam and Gau used the chart.

[Insert chart HERE.]

6. Homework assignment

Prepare a one-page analysis for the behavior of one of the implementing agencies you identified in your Chapter 1 homework assignment (on page ___) using the ROCCPII factors.

7. Further reading

The following materials provide further information about the issues discussed in this chapter and may be referred to for additional information.

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change* (Indonesian

version, 2d ed.), ELIPS II National Library, Jakarta, 2002. Pages 85–123.

NOTE: The appropriate pages for the above Seidman reference should be the pages in the Indonesian version that correspond with pages 85–123 in the English version. (This identical reference is used in Chapters 2–4.)

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*, online at <http://www.bu.edu/law/lawdrafting/manual/>, 2003. Chapters 6 and 7.

M. Irfan Islamy, *Prinsip-Prinsip Perumusan Kebijakananaa Negara*, Ed. 2, print 10, Bumi Aksara, Jakarta, 2001. Pages ____–____.

Ronny Hanitiyo Soemitro, *Studi Hukum dan Masyarakat*, Alumni, Bandung, 1985. Pages ____–____.

Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Sinar Baru, Bandung, [\[CLICK HERE TO FINISH THIS CITATION\]](#). Pages ____–____.

Sedarmayanti, *Good Governance (Kepemerintahan yang Baik) Dalam Rangka Otonomi Daerah*, Mandar Maju, Bandung, 2003. Pages ____–____.

Solichin Abdul Wahab, *Analisis Kebijakananaa, Dari Formulasi ke Implementasi Kebijakananaa Negara*, Ed.2, Bumi aksara, Jakarta, 2002. Pages ____–____.

NOTES:

- 1. These Indonesian sources should be checked for accuracy with respect to (1) the precise author(s), book title, etc., (2) consistency in form among the citations, (3) consistency among the citations that are repeated in other chapters, and (4) actual chapter or page references.**
- 2. Any inappropriate references (that is, the book or material is not applicable to the lesson) should be omitted.**

CHAPTER 5.

FORMULATING SOLUTIONS, DESIGNING IMPLEMENTATION PROVISIONS, AND ASSESSING COSTS AND BENEFITS

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2. Chapter objectives

By the end of this chapter, students will be able (1) to propose solutions addressing the causes and explanations identified using the ROCCIPI problem-solving methodology, (2) to develop implementation provisions based on causes and explanations identified using the ROCCIPI problem-solving methodology, and (3) to prepare a simple cost-benefit analysis for a proposed solution and its implementation provisions.

Teaching Notes

Recommended Instructional Outline:

Lesson 5 consists of an interactive lecture session lasting about 2 hours, with two class activities. There is a homework assignment at the end of the lesson.

The lecture is as follows:

1. Review of Lesson 4 (15 minutes). Review Lesson 4 objectives. Review Lesson 4 homework. Resolve any outstanding questions the students may have from Lesson 4.

2. Preview of Lesson 5 (15 minutes). Preview Lesson 5, using the chapter outline above.

3. Lecture (1 hour and 30 minutes). The main lecture portion will teach students (1) to formulate effective solutions addressing the ROCCIPI factors, (2) to develop implementation provisions based on the ROCCIPI factors, and (3) to prepare a simple cost-benefit analysis to ensure that the preferred or chosen solution and implementation provisions are more effective than other alternatives.

3. Introduction

In the last two chapters we saw how to analyze and explain the causes of role occupant (and stakeholder) and implementing agency behaviors using the ROCCIPI problem-solving methodology. Having identified the causes of the problem behavior, the next step is to propose solutions for each of the identified causes and then combine the solutions into a policy that will address the social problem we originally identified. In this chapter, we will discuss (1) where to look

for solutions, (2) what to consider when deciding how to implement the solution, (3) the importance of elaborating the alternative solutions you discover, and (4) how to test the alternatives for adequacy, including how to conduct a basic cost-benefit analysis.

4. Formulating solutions

(a) Finding solutions for the causes of problematic behaviors

So far we have shown how the problem-solving methodology can take a large and complicated social problem like traffic jams in Makassar, and break it down into manageable pieces, namely the causes related to the ROCCIPI factors (or categories). The next step in the process is (1) to propose possible solutions to each of these causes and (2) to use the individual solutions to build a comprehensive policy.

To begin the process, we must first recall the causes we have identified for the role occupant (or stakeholder) and implementing agency behavior. Take a moment to fill in the chart below with the information from the charts in Chapter 3 (page ___) and Chapter 4 (page ___). You will notice that we have added a column to the charts found in chapters 4 and 5. This column is where you will begin to note possible solutions to each of the causes you have identified. At this stage, it is important to include *several* possible solutions. Later, we will see how to choose from among these to identify your final proposed solution.

Figure 5.1. Analysis of ROCCIPI factors, including possible solutions for each factor.

Factor:	Hypothesis or Explanation:	Possible Solution(s):
R <u>R</u> ule	_____	_____
O <u>O</u> pportunity	_____	_____
C <u>C</u> apacity	_____	_____
C <u>C</u> ommunication	_____	_____
I <u>I</u> nterest	_____	_____
P <u>P</u> rocess	_____	_____
I <u>I</u> deology	_____	_____

Figure 5.2. [Indonesian version:] Analysis of PKKPKKI factors, including possible solutions for each factor.

	Factor:	Hypothesis or Explanation:	Possible Solution(s):
P	<u>P</u>eraturan		
K	<u>K</u>esempatan		
K	<u>K</u>emampuan		
P	<u>P</u>roces		
K	<u>K</u>omunikasi		
K	<u>K</u>epentingan		
I	<u>I</u>deologi		

Teaching Note

Class Activity

The ROCCIP categories naturally lend themselves to certain types of solutions. Write the ROCCIP categories at the front of the classroom (on the blackboard or an easel). Then ask the students to suggest what kinds of solutions might apply to each category. For example, problematic behavior caused by ideology may be amenable to educational campaigns. This exercise should get students thinking about possible solutions for the problems they have analyzed.

(b) Where to look for solutions

As you look at the chart above, you are probably generating several possible solutions to the causes you have identified. Your own ideas, based on logic and your experience, are the first place to look for solutions. Other possible sources for solutions include (1) foreign law and experience, (2) professional literature, and (3) your own country’s past experience.

(1) Foreign law and experience

Foreign law and experience — both successes and failures — can be an important source for solutions. You may be asking yourself, however, why we suggest using foreign law and experience after criticizing “copying foreign law” in Chapter 2. The fault we identified in Chapter 2 was copying foreign law wholesale, without first understanding the unique circumstances present in one’s own culture. Here, we have identified the causes of the problem behavior. If the explanations of these causes mirror those of a foreign jurisdiction, it is appropriate to apply foreign solutions to the problem in your country.

(2) Professional or academic literature

Professional or academic literature may also provide a rich source of ideas for proposing solutions. When reviewing professional literature for ideas, it is important not to limit yourself to literature exploring legal solutions to social problems. A study conducted by an educator and detailed in a professional journal may show how, for example, educational pamphlets distributed in person have a positive effect on the recipient's retention of the material. This insight could be used in the traffic jam scenario to include in your policy the requirement that the new law be communicated through flyers distributed in person at the time ankot drivers are licensed.

(3) Your own country's past experience

Your own country's past experience can also provide ideas for solutions. When looking at your own country's experience it is important not to be too swift in rejecting a past failed law. The law may have failed as a whole but may have provided an effective solution for a particular causal factor.

Teaching Note

Class Activity

Using the ROCCIPI categories you have already written at the front of the classroom (on the blackboard or an easel), ask the students (1) to suggest possible solutions for each causal factor, and (2) to indicate which solutions are direct, indirect, or educational.

5. Designing implementation provisions

Your solutions will not implement themselves. You must make it clear in your policy who is responsible for implementing the policy's provisions. In order for the policy to be effective, you must choose an implementer that has adequate structure, processes, and resources. (For example, even though an educational campaign targeted at ankot drivers deals with traditional traffic enforcement, the police are unlikely to have the structure or resources to develop an effective *educational* campaign.) In this section, we will discuss (1) types of measures that can you can use to influence behavior, (2) the basic types of implementing bodies you can call on to implement these measures, and (3) the basic criteria for choosing an appropriate implementing body.

(a) Types of measures

There are generally three types of measures used by policy drafters to change problematic behaviors. They are (1) direct measures, (2) indirect measures, and (3) educational measures.

(1) Direct measures

Direct measures target the casual factors associated with *interest*. Direct measures include both *punishments* and *rewards*. Traditionally, policy drafters have relied heavily on this type of conformity-inducing measure. Unfortunately, these policies usually focus on punishment, even though reward may be equally, or even more, effective. Some examples of direct measures might include (1) a fine for violating a policy (punishment), or (2) tax benefits for parents who choose to save money for their children’s education (reward).

(2) Indirect measures

Indirect measures seek to influence casual factors associated with *opportunity*, *capacity*, *communication*, or *process*. Such measures are generally not rewards or punishments.

For example, low enrollment of students from Irian Jaya in Indonesian universities may be explained by their lack of *capacity* to attend (their ability to afford tuition). An indirect measure addressing the *capacity* factor could involve lowering tuition generally in Indonesia, or creating more universities in Irian Jaya to serve local students.

In another example, the failure of ankot drivers to obtain licenses could be explained by the complicated *process* of obtaining a license. An indirect measure addressing the *process* factor could be a policy to simplify the procedures for licensing ankot drivers.

(3) Educational measures

Educational measures are generally aimed at influencing *ideology*, but may also deal with *capacity* in situations in which the capacity involves a lack of information or expertise.

(b) Choosing an implementer

Once you have considered the types of measure you need, you must next choose an appropriate body to implement the measure. In this section, we will discuss four “classes” of implementers and their relative advantages and disadvantages. These classes of implementers are (1) courts and tribunals, (2) administrative agencies, (3) public corporations, and (4) private-sector organizations.

(1) Courts and tribunals

Courts have three primary advantages as an implementer. The first is that courts tend to have a very formal structure that lends itself to careful consideration of issues. Second, courts are generally compelled to respond when citizens come to them with complaints. Third, courts in many societies are perceived with a high degree of legitimacy.

Unfortunately, courts suffer from several disadvantages that prevent them from being an ideal implementer in all situations. Courts are, for the most part, *reactive* bodies that must wait for problems to be formally presented to them. As such, they may be too slow to react to pressing issues. Courts rely on people or organizations to bring cases before them and since some plaintiffs (such as business interests) are “repeat customers”, the court’s agenda may be driven by a privileged few at the expense of the poor or unsophisticated. Further, since the role of courts is often limited merely to affirming or reversing the discrete issues before them, they may not be able to address all of the important issues that might arise in each case. Finally, courts deal with a variety of issues and therefore seldom develop the expertise adequately to deal with very novel or complex issues.

Tribunals are sometimes created by legislatures to deal with some of the disadvantages of courts. Tribunals are generally less formal than courts and are therefore (1) less expensive and (2) able to be more flexible in handling complex cases. Because tribunals are often created to deal with particular issues (for instance, war crimes), they can develop a specialized expertise. As might be expected, these advantages come at a price. The lack of formality and the *ad hoc* nature of tribunals may negatively affect their perceived legitimacy in society and their ability carefully to consider the cases before them.

(2) Administrative agencies

Administrative agencies include governmental ministries, departments, or other entities. Administrative agencies are generally more flexible than courts or tribunals. Because administrative agencies are typically organized around a specific issue (for instance, the environment, public health, etc.), they develop a great deal of expertise. Also, unlike courts or tribunals, administrative agencies have the ability to be *proactive*.

A disadvantage of using administrative agencies as implementers is that agencies are susceptible to partisan political control. Administrative agencies are also susceptible to undue influence of the very parties they are sometimes tasked with regulating. In addition, often administrative agency employment is merely a “stepping stone”

to a more lucrative career in a regulated industry, so an individual regulator may not be well-disposed to being too harsh on a future employer. Finally, in order to deal with the previously mentioned disadvantages, administrative agencies can be highly bureaucratic, which may reduce their overall effectiveness and efficiency.

(3) Public corporations

Public corporations combine the best qualities of private-sector organizations and governmental organizations. An advantage of using public corporations is that it may have the effect of reducing “red tape” and inefficiency often present in purely public bodies (such as administrative agencies). A disadvantage, however, is that public corporations may have an increased potential for corruption as well being less accountable to the public.

(4) Private-sector organizations

Private-sector organizations may include hospitals, universities, research institutions, charities, and other non-governmental organizations. One advantage of using private-sector organizations is that many of these organizations have expertise on specific issues that may be lacking in public organizations, especially when the policy deals with a “cutting edge” issue. Another advantage is that using a private-sector organization as an implementer may also relieve taxpayers of some of the financial burden of changing problematic behaviors.

Unfortunately, private-sector organizations may lack the resources available to governmental organizations. In addition, private-sector organizations may lack the public interest motivation of government, which may affect their resolve in dealing with the underlying social problem.

(c) Choosing between using an existing implementer or establishing a new one

You may find that existing implementers are unable successfully to implement the measures called for in your policy. In such a case, you will have to weigh whether to establish an entirely new entity or to use an existing one. The advantage of establishing a new agency is that you may avoid perpetuating negative bureaucratic ideologies or corruptive practices. Unfortunately, establishing a new agency may significantly increase the cost of your policy solution. A final decision about whether to establish a new agency may depend on the results of a cost-

benefit analysis (discussed below). (Note that it is beyond the scope of this course to discuss the intricacies of establishing a new agency).

(d) Elaborating alternative solutions

Once you have identified one or more possible solutions for each of the relevant ROCCIPI causal factors, it is important to detail each alternative (including plans for implementation) in your research report. This elaboration serves two purposes. First, it allows you to make meaningful choices based on full and adequate information. Second, it promotes transparency by providing the reader of the research report with enough information to judge the logic and efficacy of your proposed solution.

(e) Judging between alternative solutions

After elaborating on the alternative solutions for each of the causal factors, you must choose the solution that will be included in a provision that will be part of the larger comprehensive policy. Each provision must, of course, alter or eliminate the causal factor it is meant to address and therefore help induce the desired change in the role occupant (or stakeholder) or implementing agency behavior.

You may find that more than one provision meets this test. You may also find that more than one provision is necessary to fully address a single causal factor. If this is the case, multiple provisions may be included in the comprehensive policy, as long as they do not conflict with each other and the cost is not prohibitive. If you must choose between two or more competing provisions, you may have to conduct a cost-benefit analysis (discussed below) to determine which provision will become a part of the final policy.

(f) Combining the provisions into a comprehensive policy

After you have chosen provisions that deal effectively with each of the causal factors you have identified, you will combine the provisions into a comprehensive policy. At this stage, it is important again to “test” whether the comprehensive policy will be an adequate solution. In order to do this, you should ask yourself the following questions:

1. Does the policy actually induce the desired behavior?
2. Alternatively, does the policy eliminate or reduce the problem behavior?
3. Does the policy systematically address each of the causal factors you have identified?

4. Does the policy prescribe appropriate implementing agency behaviors likely to result in (a) effective implementation, and (b) implementation that is consistent with good governance?

5. Can the government allocate sufficient resources to ensure effective implementation?

6. Are there sufficient provisions for reviewing the law and making changes later if required?

6. Cost-benefit analysis

After you are satisfied that the comprehensive policy answers all the questions asked in the preceding section, it is important to subject it to one more test: *Do the foreseen benefits of the policy outweigh the costs?* If so, how does the ratio of costs and benefits compare to the current situation (the “status quo”) and other policy alternatives. (For example, if your policy costs Rp. 10 billion to deliver Rp. 5 billion in benefits, how can you justify it? If your policy results in a benefit of Rp. 10 billion at a cost of Rp. 5 billion, can you justify its adoption if an alternative delivers more benefits for less money?)

(a) Purposes of cost-benefit analysis

The cost-benefit analysis serves two purposes. First, it establishes a threshold. That is, a policy must provide more benefits than the policy itself costs. Second, like so much in your research report, the cost-benefit analysis promotes transparency by providing the reader with the assumptions underlying the proposed policy.

(b) Monetary and non-monetary considerations

It is important to consider in a cost-benefit analysis both monetary and non-monetary costs and benefits. (For example, not only can the cost of the traffic situation in Makassar be measured in lost business, traffic accidents, and pollution, but it can also be measured in the lost prestige associated with chaos in the regional capital and the aesthetic degradation caused by the large number of automobiles.)

(c) Basic methods of analyzing costs and benefits

Although there are sophisticated models for conducting cost-benefit analyses, for purposes of this course, we will present a basic method for calculating costs and benefits in order to present the reader of the research report with enough information to make an informed decision regarding the policy’s value.

In order to present a complete picture of the relative costs and benefits associated with your policy, you must complete several

analyses. You must ask what would happen if there were no change in the current policy (that is, if you kept the “status quo”). You must also compare the costs and benefits associated with the alternative solutions to those associated with your own preferred or chosen policy.

(1) Comparing the chosen policy with doing nothing (“status quo” analysis)

At this stage in the process, you have probably gathered all the information you need to write about the costs of taking no action (that is, keeping the “status quo”). For example, in the traffic jam scenario, you could rely on the letters sent to the mayor, the research you gathered from newspapers, and your direct observations to present the costs of doing nothing. But what about the benefits? Obviously, someone is benefiting from the current state of affairs (the “status quo”). For example, ankot drivers have a great deal of freedom under the current situation, which is certainly of value to them. Make sure to include these types of costs and benefits in your analysis.

(2) Comparing the chosen policy with alternative policies

Having discussed the costs and benefits of doing nothing, you can next turn to the analysis of alternative policies and of your own preferred or chosen policy.

Since you have already shown that your chosen solution can logically deal with the current social problem, it follows that the primary benefit of that policy will be the elimination or reduction of those costs. The alternative solutions will undoubtedly deal with the current situation in a less-effective manner than your chosen policy solution. Therefore, the alternative solutions will retain some of the costs of the current situation.

You must also make estimates of the monetary and non-monetary costs of implementing alternative policies compared with implementing your own preferred or chosen policy solution. The most obvious costs will those directly related to implementing the policy, such as the salaries of new employees, the cost of opening additional offices for the implementing agency, etc. Less obvious costs might include such non-monetary factors as, for instance (in the case of ankot drivers), the loss of freedom associated with greater regulation.

Figure 5.3. Progress chart.

NOTE: Pipit, please insert progress chart here — IF it is appropriate to do so. If you do insert it, please use dark outlines for the steps already covered and dotted lines for the steps not yet taken.

[Insert chart HERE, if appropriate.]

7. Homework assignment

Using the ROCCIPI causal factors you identified in Chapters 3 and 4, propose a policy solution. For each proposed provision (1) write a two-sentence explanation of why you believe the provision will effectively deal with the causal factor, (2) identify an appropriate implementing agency, and (3) write a brief explanation of the costs associated implementing that provision.

8. Further reading

The following materials provide further information about the issues discussed in this chapter and may be referred to for additional information.

[English version:] Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change* (English version), Kluwer Law International, Boston, Massachusetts, 2001. Pages 85–123.

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NOTE: Please add references to any other appropriate (Indonesian) materials. Please do this for all the chapters.

CHAPTER 6.

DATA-GATHERING AND RESEARCH

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2. Chapter objectives

By the end of this chapter, students will be able (1) to understand the distinction between quantitative and qualitative data-gathering methodologies, (2) to understand the data-gathering principles and techniques presented in the chapter, and (3) to formulate questions for use in an interview or a questionnaire in order to gather information for developing hypothesis to explain problematic behavior.

Teaching Notes

Recommended Instructional Outline:

Lesson 6 consists of an interactive lecture session lasting about 2 hours. There is a homework assignment at the end of the lesson.

The lecture is as follows:

1. Review of Lesson 5 (15 minutes). Review Lesson 5 objectives. Review Lesson 5 homework. Resolve any outstanding questions the students may have from Lesson 5.

2. Preview of Lesson 6 (15 minutes). Preview Lesson 6, using the chapter outline above.

3. Lecture (1 hour and 30 minutes). The main lecture portion will teach students (1) to understand the distinction between quantitative and qualitative data-gathering methodologies, (2) to understand the data-gathering principles and techniques presented in the chapter, and (3) to formulate questions for use in an interview or a questionnaire in order to gather information for developing hypotheses to explain problematic behavior.

3. Introduction

In the last several chapters, we have introduced a problem-solving methodology for solving social problems. Along with presenting the

methodology, we have also provided a sample social problem to analyze and propose solutions to. To facilitate understanding, we have provided all the materials you needed to complete each step of the process. In real life, of course, you will not be given all of the materials, conveniently organized for you. You will be required to conduct your research using newspapers, scientific studies, scholarly works, and other such sources of information. When you do not have access to such information, you will may be forced to conduct research yourself. This chapter will introduce you to the fundamentals of gathering data to explain problematic behavior and to test your hypotheses regarding this behavior.

4. Research and gathering data generally

A draft policy or law is not based on abstract logical conclusions, but on logical conclusions grounded in facts and experience. Whether the drafter relies on the experience of others (in the form of formal research or anecdotal reports), or on the drafter's own experience (based on formal research or observation) an understanding of research methodology and data gathering is crucial to obtain accurate data for use in formulating effective policy.

With respect to the four steps of the problem-solving methodology, a drafter needs to organize facts and data in order (1) to describe the nature and scope of the social problem or difficulty, (2) to analyze and explain the causes of the problematic behavior of the role occupant and the implementing agency, (3) to test hypotheses about the problematic behavior, to develop alternative solutions, and to choose the best solution, and (4) to conduct a cost-benefit analysis that evaluates the economic and social benefits, as well as the negative impacts, of a proposed policy or law.

The search for relevant data can be focused in two areas: (1) data obtained from existing sources, and (2) data obtained through stakeholder participation.

(a) Gathering data from existing sources

The drafter of a policy or law is seldom directly involved in gathering original or new data. Generally, through interviews with knowledgeable individuals or from existing documents and information, a drafter performs "research" by collecting and organizing facts that have *already* been gathered by others.

(b) Gathering data through stakeholder participation

Data gathering often tends to focus on “expert” opinion regarding a phenomenon, whether it be a scholarly article or an interview with a government official with specialized knowledge of the problem. It is important for the drafter to involve stakeholders — not only as the object, but also as the subject, of research — in order to promote a more democratic process of policymaking and lawmaking.

There are a number of reasons to include stakeholders in research. First, stakeholders have interests in the proposed policy or law, so they have motivation to cooperate with the researchers. Second, stakeholders have their own knowledge about the related problem and the environment in which the problem occurs, so they can participate in gathering facts in the four steps of the problem-solving methodology. Finally, involving stakeholders in research enhances their capacity to cooperate in finding a solution to social problems.

5. Data-gathering methodologies

This section discusses the two methods for gathering data: (1) quantitative methodology, and (2) qualitative methodology.

(a) Quantitative methodology

Quantitative methodology, as the name implies, focuses on how a phenomenon expresses itself in objective quantity. (For example, age can be expressed in years, height can be expressed in meters, price can be expressed in rupiah, and so forth.) In social sciences, quantitative methods generally involve calculations related to people and their thoughts or opinions. The advantage of using a quantitative methodology is that the results of the inquiry can be easily compared. (For example, you might determine that the average age of students in Makassar is higher than the average age of students in Denpasar.) The disadvantage is that by breaking down a phenomenon into units for easy comparison, the data may have limited use. (For example, knowing the average ages of students in Makassar and Denpasar tells us nothing about their intelligence, motivation, or likelihood of future success.)

(b) Qualitative methodology

Qualitative methodology focuses on how a phenomenon is perceived in *subjective* quality. (For example, the beauty of a sculpture, whether the price in rupiah is too expensive, and so forth.) This methodology encourages the participation of stakeholders, since

stakeholders are most likely to have information regarding the social problem.

6. Application of data-gathering methodologies to the problem-solving methodology

This section shows how both quantitative and qualitative methodologies can be used in each of the four steps of the problem-solving methodology, as described below.

(a) Step 1 — Describing the problem or difficulty

Describing the social problem is the first step in advocating change. As an effective advocate you need to express both the quantity of the problem and its quality. In other words, “How much is it happening?” and, “How much does it hurt people?”

(b) Step 2 — Analyzing the problematic behavior

Each ROCCIPI factor can be thoroughly examined only by considering both quantitative and qualitative data. Note that some ROCCIPI factors or categories (such as *interest* and *ideology*) may rely on one type of data more than the other type. (In the case of *interest* factors, quantitative data is usually more relevant. In the case of *ideology* factors, qualitative data is usually more informative.)

(c) Step 3 — Testing hypotheses and proposing solutions

The type of data used to explain the causes of the problematic behavior will mirror the type used in creating hypotheses. For example, if a qualitative analysis indicates that a “buyer beware” attitude is an underlying cause of shop owners selling defective products, a qualitative search for solutions (through interviews, etc.) may result in a possible solution.

(d) Step 4 — Conducting a cost-benefit analysis

A complete cost-benefit analysis includes both quantitative and qualitative data. Costs and benefits can be measured in terms of both quantity (for instance, an amount of money) and quality (for instance, safety, enjoyment, or loyalty).

7. Techniques for gathering data

This section discusses three techniques often used by researchers for gathering data: (1) one-on-one interviews, (2) first-hand or direct observation, and (3) questionnaires or surveys.

(a) Interviews

Researchers very often obtain data or information from people who have knowledge of some aspect of the problem. They do this through one-on-one interviews. The person being interviewed is called the “**respondent**”. Interviews may be conducted face-to-face (in person), by telephone, or even over the Internet. However they are conducted, the basic concepts for an effective interview are the same. The two basic types of interview types are (1) structured interviews, and (2) unstructured interviews.

(1) Structured interviews

A structured interview uses a list of questions to be asked by the interviewer. The interviewer communicates the questions to the respondent and may be able to ensure that the respondent understands the questions. In many ways this technique resembles the questionnaire (discussed below), with the added advantage of having an interviewer available to explain any uncertainties or ambiguities the respondent may find in the questions.

(2) Unstructured interviews

An unstructured interview is one in which the interviewer obtains information about a specific subject based on guidelines rather than a list of specific questions. These guidelines consist of the main points or ideas about the matters that are to be asked in the interview. In an unstructured interview, the interviewer has freedom in how to formulate questions to obtain the desired information about the main points or ideas described by the interviewer’s guidelines. Using the guidelines, the interviewer is free to ask questions and to probe more deeply and follow-up important matters in order to enrich the information (data) obtained.

The unstructured interview can be divided into two types: (1) **focused interviews**, and (2) **free interviews**.

(A) Focused interviews

A focused interview is one that aims to clarify a research problem with a hypothesis that has been formulated beforehand, even though more specific questions about the concepts in the hypothesis have not been formulated, or detailed in writing, in advance. This technique is basically like a “half-structured” interview.

(B) Free interviews

A free interview has no structure at all. It mostly depends on the development of the question-response process between the interviewer and the respondent throughout the interview. The interview is conducted with few, if any, basic guidelines concerning its content or how questions should be formulated.

(b) Direct or first-hand observation

Researchers can also gather data through direct or first-hand observation of people or situations. This observation enables researchers to explain behavior or test hypotheses.

When observing people's behavior, the subject of the observation, must be unaware that his or her behavior is being observed, lest the respondent artificially alter the behavior being observed. (For example, an ankot driver that knows that you are studying ways of reducing traffic jams may avoid stopping at unsanctioned stops in order to give you the impression that such behavior is not an issue.)

(c) Questionnaires or surveys

Researchers also gather data using questionnaires or surveys in which respondents answer a series of questions (usually in writing). When using questionnaires or surveys, the respondent plays a very important role in helping the researcher obtain the needed data. Using a questionnaire is similar to conducting a structured interview (discussed above), but the questions are posed in writing to the respondent.

When conducting a survey, the questionnaire may be answered by many different methods, including by using (1) pen or pencil and paper, (2) a computer program, or (3) the Internet.

Questionnaires may be given to respondents and returned to the researcher either directly or indirectly. Very often, questionnaires are sent and returned indirectly by mail. These are called "mailed questionnaires".

There are several factors that may affect whether the respondent returns the questionnaire to the researcher. These include (1) who the researcher or research sponsor is, (2) the length of questionnaire, (3) the means by which the questionnaire is delivered to the respondent and to be returned to the researcher, and (4) any compensation provided to the respondent for participating in the research by completing the questionnaire.

8. Rules for creating questions to be included in an interview or a questionnaire

In order for the researcher to obtain primary data needed from the respondents, a data-gathering tool is required. A list of questions to be used in an interview or in a questionnaire is an important standard tool for gathering data. This section describes the rules for formulating effective questions and effective lists of questions.

(a) General rules for the overall list of questions

Before compiling a list of questions, the researcher needs to consider (1) clarity of concepts and related indicators, (2) standardization, (3) objectivity, and (4) the relevant unit or method of measurement.

(1) Clarity of concepts and related indicators

The researcher must determine clear boundaries of the concepts related to the behavior to be explained or the hypothesis to be tested. The researcher must then determine what informational indicators are related to the concepts identified. Data concerning the indicators is what the researcher needs to gather in the research. Therefore clear boundaries of the concepts will facilitate the researcher to compile a list of questions. Once a list of indicators has been determined for each concept, the researcher can design questions to obtain information about those indicators.

(2) Standardization

In order to compare information obtained from respondents with different backgrounds and experiences, questions must be standardized, to eliminate or account for such differences.

(3) Objectivity

Objectivity is important in obtaining valid results. When formulating your questions, they should be as neutral as possible, to avoid suggesting a certain response and to prevent introducing bias into the results. You should formulate your questions in manner that avoids different respondents having different understandings or interpretations of the same question.

(4) Relevant unit or method of measurement

The researcher must choose a unit or method of measurement that is appropriate to both the type of data to be obtained and the respondent being asked the question.

(b) Rules for formulating individual questions

When formulating questions to be included in an interview or a questionnaire, the researcher should consider (1) the type of question to be asked, (2) the form of the question, and (3) the content of the question.

(1) Types of questions

There are four types of questions that are generally used. They are (1) background questions about the respondent, (2) questions to elicit the respondent's opinions or comments, (3) questions about the respondent's level of knowledge or information, and (4) questions about the respondent's perceptions.

(A) Background questions

Background questions about the respondent are those concerning facts about the respondent's personal characteristics. These questions often include (1) residence or other geographical information, (2) gender, (3) age, (4) marital status, (5) occupation, (6) education level, (7) religion, (8) ethnicity, and so forth.

For example:

Question: What is your age?

Question: What is your current occupation?

Question: Have you ever participated in training concerning your profession?

(B) Questions eliciting opinions or comments

Questions may be designed to elicit the respondent's opinions or comments about certain matters.

For example:

Question: What is your opinion about protected forest areas?

Question: Do you believe that shifting cultivation activity is destroying the forest?

(C) Questions on knowledge or information

Questions may be designed to measure how much knowledge or information the respondent has concerning certain matters. These questions reflect the respondent's level of knowledge concerning the subject matter.

For example:

Question: How long have you known that there is a protected forest in the area?

Question: Do you know the advantages of a protected forest to your life?

(D) Questions on perceptions

Questions about the respondent's perceptions measure how the respondent evaluates a certain matter in relation to another matter or person. There are no right or wrong answers to these questions. Through the answers about the respondent's perceptions, the researcher will obtain an image of the subject matter from the *respondent's* point of view.

For example:

Question: If you had financial capital, you would
(Respondent is to complete the unfinished sentence.)

Question: Do you prefer to borrow financial capital from (1) a bank, or (2) an individual?

(2) Form of questions

There are three forms of questions that are generally used. They are (1) closed questions, (2) open questions, and (3) half-open questions.

(A) Closed questions

A closed question provides a respondent with a specific and finite list of possible alternative responses or categories of answers. Respondents simply choose one of the alternatives or categories of answers provided, according to their choice. A good closed question is one that provides alternatives or categories of answers that (1) are complete, and (2) do not overlap with one another. Note that sometimes the respondent may choose more than one answer (often these questions contain special instructions like, "Choose one or more of the following:").

For example:

Question: How much money do you earn in a month?

Answer:

(1) ≤ Rp. 100.000.

(2) Rp. 100.025 – Rp. 200.000.

- (3) Rp. 200.025 – Rp. 300.000.
- (4) Rp. 300.025 – Rp. 400.000.
- (5) Rp. 400.025 – Rp. 500.000.
- (6) > Rp. 500.000.

Question: What factor most motivates you to cut down trees?

Answer:

- (1) The question does not apply to me because I do not cut down trees.
- (2) I need the wood for my own cooking or firewood.
- (3) I need money obtained from selling the wood to others.

(B) Open questions

An open question does not provide a specific list of possible responses or categories of answers. Respondents are free to give their own answer, according to their own will.

For example:

Question: How much money do you earn in a month?

Answer: Rp.

Question: What factor or factors motivate you to cut down trees?

Answer:

- (1)
- (2)
- (3)

(C) Half-open questions

Sometimes the researcher wants to suggest a list of possible responses but also allow a different answer from the respondent. This form of question provides one or more alternatives or categories of answers but also lets respondents answer according to their own will.

For example:

Question: Which type of trees do you think are most useful as reforestation plants?

Answer:

- (1) Teak trees.
- (2) Mango trees.

(3) Other (specify):

Question: What factor or factors motivate you to cut down trees?

Answer:

(1) I need the wood for my own cooking or firewood.

(2) I need money obtained from selling the wood to others.

(3) Other (specify):

(3) Content of questions

The important concern in formulating the content of a question is that the question should be clear and simple. A question is *clear* if the respondent can understand the meaning of the question asked. A question is *simple* if it has only one meaning and does not lead to another interpretation. There are several considerations in formulating the content of a clear and simple question. These are discussed below.

(A) One matter per question

In formulating a question, try not to put two matters that you wish to ask into one question, as in the commonly known “double-barreled” question. Instead, ask two questions.

For example:

Do not ask this “double-barreled” question:

Question: When and where did you first hear about the reforestation program in your area?

Instead, ask these *two* questions:

Question 1: When did you first hear about the reforestation program in your area?

Question 2: Where did you hear first about the reforestation program in your area?

(B) Avoid ambiguous or vague terms

In formulating a question, avoid words that are unclear or that have a vague meaning.

For example:

Question: Do you often catch fish in the Komodo National Park area?

In this example, using the word “often” can lead to different interpretations by respondents. One respondent may consider catching

fish three times a month to be “often”, while another respondent may not consider three times a month to be “often” enough.

(C) Avoid using jargon or technical terms

In formulating a question, avoid jargon or technical terms. In general, avoid using words or language that the target respondent may be unable to understand or that do not meet the respondent’s capacity. Such words or language may cause the respondent to be unable to understand the meaning of the question put forward.

For example:

Respondents in a remote village, who generally have low education levels, find difficulty in understanding questions such as the following:

Question: How do you participate in the agricultural innovation process?

In this example, the terms “participation” and “innovation process” are abstract or technical terms that may be seldom used in rural areas.

(c) Order of questions

The last important matter in compiling a list of questions is the order of the questions. The order of the questions can affect whether or not the researcher obtains the desired data.

(1) Ask closed questions first, ask sensitive questions later

It is better to begin with questions (1) regarding non-sensitive subjects, (2) that are posed in a non-threatening manner. These questions are typically closed questions. Beginning the questioning with questions of a sensitive nature may lead the respondent to refuse further questioning, leaving you with many unanswered questions. Although what constitutes subjects that are sensitive depends on individual cultural preferences, the form of certain questions, regardless of their substance, may lead to respondent discomfort.

Generally, open questions require a respondent to reveal a personal preference as opposed to choosing from a set list. As such, open types of questions should be saved for later in the interview or questionnaire. Conversely, you should begin with closed questions, when possible, before moving on to open questions or sensitive questions.

(2) Use “filter” and “follow-up” questions

Some questions are really composed of two parts: (1) a “**filter**” question, and (2) a “**follow-up**” question. The answer to the first part (the “filter”) determines what will be asked in the second part (the “follow-up”). For instance, in order to ask a question that involves only a few people in a certain category, you need to ask an initial “filter” question to determine whether the respondent is one of the people that fits into that category. If the person fits into the category, then you can ask the “follow-up” question to obtain the desired information.

For example:

Do not ask this “unfiltered” question:

Question: What kind of job do you do?

In this example, the “unfiltered” question presumes that the respondent has a job, which may not be the case. It is better first to ask whether the respondent has a job, then to ask what the job is. Thus, use “filter” and “follow-up” questions:

Filter question: Are you currently working?

Answer: () Yes () No

Follow-up question: If yes, what kind of job do you do? If no, why are you not working?

(3) Put questions in a logical order

Questions should be put in a logical order to avoid confusing the respondent. Questions jumping from one matter to another will break the respondent’s concentration in answering the questions. Conversely, after all the questions concerning a certain matter are asked, the questions may then move on to other matters.

9. Homework assignment

1. Write a questionnaire with ten questions, in which you use each of the three question forms outlined in this chapter. The questionnaire should be targeted at ankot drivers and should gather information relevant to at least four of the ROCCIPI factors.

2. Write a one-paragraph plan for using the observation technique to gather information about the problem of traffic jams. You may want to start by answering the following questions: Where would you go? Who would you observe? What aspects of the problem would you measure?

10. Further reading

The following materials provide further information about the issues discussed in this chapter and may be referred to for additional information.

[English version:] Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change* (English version), Kluwer Law International, Boston, Massachusetts, 2001. Pages 167–186.

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Earl R. Babbie, *The Practice of Social Research* (2d edition), Wordsworth Publishing Company, Inc., Belmont, California, 1979.

Masri Singarimbun and Sofian Effendi (editor), *Survey Research Methodology*, LP3ES, Jakarta, 1989.

Manasse Malo and Sri Tristoningtias, *Community Research Methodology*, PAU–IIS, Universitas Indonesia, Jakarta.

NOTES:

1. **Please correct any of the non-Seidman references.**
2. **Please add references to any other appropriate (Indonesian) materials.**
3. **Please do this for all the chapters.**

CHAPTER 7.

THE RESEARCH REPORT

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2. Chapter objectives

By the end of this chapter, students will be able to compose a complete research report, including a recommended policy.

Teaching Notes

Recommended Instructional Outline:

Lesson 6 consists of an interactive lecture session lasting about **2½ to 2¾ hours**. There are several *optional* in-class assignments. At the end of the lesson, you will assign students to critique groups to work on course scenarios or actual social problems.

The lecture is as follows:

1. Review of Lesson 6 (15 minutes). Review Lesson 6 objectives. Review Lesson 6 homework. Resolve any outstanding questions the students may have from Lesson 6.

2. Preview of Lesson 7 (15 minutes). Preview Lesson 7, using the chapter outline above.

3. Lecture (2 hours and 15 minutes). The main lecture portion will teach students to compose a complete research report including a recommended policy, as follows:

- (a) Writing the research report (45 minutes).
- (b) Rules for drafting policy (1 hour).
- (c) *Optional* in-class assignments (15 minutes).
- (d) Assignment of course scenarios or actual social problems (**15 minutes**).

NOTE from Mark: Pipit, I’m not sure how long the assignment of course scenarios at the end of the lesson should take. I put in 15 minutes. If you think it should be more time, please make the appropriate change there and above (in the 2 places the times are added up).

At the end of this lesson, students should be broken into groups corresponding to the number of social problems or scenarios you choose to assign. Ideally, the number of students in each group should allow for each student to research and write a meaningful

portion of the research report (that is, the problem statement, the ROCCIPI explanation of the role occupant's behavior, etc.). You may choose to assign specific sections of the research report to individual students or have the group decide. In either case, students should know when they are required to finish their section and submit their work for group critique. More on the structure of critique groups is at the end of this chapter.

3. Introduction

The first six chapters introduced the concept of using legislative policy to deal with social problems and how to identify and analyze the problematic behaviors that contribute to these social problems. In the course of these chapters we have used the problem of traffic jams to give you experience in every step of the problem-solving methodology. This chapter shows how to combine all of the steps you have learned into a formal research report that can be used to justify your legislative policy proposals.

4. Writing a research report

A research report is a tool to control the quality of a draft policy or law. This report gives the drafters and other parties the information required to review (or check the quality of) the proposed policy or law. It is also an advocacy document justifying and arguing for the solution the drafter proposes by relying on the drafter's (1) quality of research, (2) soundness of logic, and (3) ability to make the reader see the benefits of the chosen policy solution over other alternatives, including doing nothing (that is, maintaining the "status quo").

(a) Function of the research report

The research report serves several functions. First, it justifies the choice of policy by detailed and systematic analysis of the social problem using logic based on experience. Second, it provides information to the reader about the methodology used to arrive at the conclusion. Finally, it provides information and justification for the policy or law *makers* (in addition to the *drafters*) that they can use to influence other decision makers.

(b) Structure of the research report

The research report described in this textbook contains four parts: (1) identification of the characteristics and scope of the social problem, (2) explanations of the problematic behavior(s) that contribute to the social problem, (3) proposed solution(s) to the social problem, and (4)

provisions for implementing, monitoring, and evaluating the proposed solution(s).

(1) Part 1 — Identification of the characteristics and scope of the social problem

Part 1 of the research report identifies the scope of the social problem, including identifying probable role occupants and implementing agencies.

(2) Part 2 — Explanations of the problematic behavior(s)

Part 2 of the research report systematically examines each ROCCPI factor for the identified role occupants and implementing agencies, explaining how each factor contributes to the problem. Make sure to acknowledge factors that do not contribute and briefly explain why.

(3) Part 3 — Proposal(s) for solution

Part 3 of the research report contains proposed solutions addressing every contributing ROCCPI factor. These proposed solutions are then transformed from separate proposals into a single unified policy statement.

(4) Part 4 — Implementation, monitoring, and evaluation

Part 4 of the research report proposes implementation, monitoring, and evaluation provisions, as well as provisions for making future changes. First, it must include provisions for effectively implementing the proposed policy. Second, it must include provisions for monitoring the proposed policy after implementation. That is, it should have an adequate control and evaluation mechanism to measure the policy's effect and effectiveness. Finally, it must include a procedure for making necessary changes in areas in which the policy falls short of expectations.

(c) Checklist for the research report

Figure 7.1 provides a detailed outline for drafting a research report.

NOTES:

- 1. The English version of Box 4.11 from the Seidman Manual for Drafters is reproduced below.**

2. I assume the Indonesian translation of the Seidman book is accurate, so you should only have to make the corrections noted below to that text when inserting it into the Indonesian version of this textbook.
3. I have made the following changes, which are mostly *marked in red* in the text:
 - (a) I *renumbered the outline* to match our own textbook's format. (These changes are NOT marked in red and don't need to be made to the Indonesian version if it is too much work.)
 Old order = I. A. (i) (a) (1)
 New order = I. 1. (a) (1) (A)
 - (b) The text of the footnotes (footnotes 25 and 26) is included in the text as a "NOTE" rather than in a footnote.
 - (c) References to "Chapter 5" [of the Seidman book] are changed to "Chapter 4" [of this textbook].
 - (d) References to "Chapter 7" [of the Seidman book] are changed to "see below in this chapter".
 - (e) References to "steps" in the outline are changed to "sections". And a reference to "this Part" is changed to "this section".
 - (g) Certain examples in the text (marked in red) are put into parentheses. These may be deleted to shorten the length of the outline, if you think they are unnecessary.

Figure 7.1. Checklist for a research report. (Adapted from Seidman, Seidman, and Abeysekere, *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, Box 4.11, pp. 118–122 (English version).)

Note that this checklist includes provisions in brackets with respect to the location of history and comparative law materials. For drafters, these suggest discretionary choices. Ordinarily, drafters should discuss history in only one place in the research report. Comparative law and experience — relating to other countries' efforts to use law to resolve similar problems — almost invariably contributes primarily to weighing social costs and benefits of alternative solutions. Nevertheless, as indicated, a drafter may decide to include that experience elsewhere in the report.

To reiterate: This outline should be treated as a flexible guide, not a straitjacket. Every research report constitutes a special case. Vary from this outline at will — but be sure that you can explain why you do so.

I. Introduction

[NOTE: While not required, a ‘grabber’ paragraph — a gripping anecdote or a shocking statistic — at the beginning of a report may serve to attract the readers’ attention to the social problem’s importance and the necessity of considering a possible legislative programme to resolve it. If used, it should lead logically into the body of the report as here outlined.]

1. Brief statement of the problem and the bill’s proposed solution.
2. Fitting the social problem addressed by the bill into the larger context. Frequently, the problem constitutes a small part of a much larger one. (For example, in China, the bill to set up a central bank comprised part of an extensive legislative programme to restructure the banking and financial system.) The research report’s introduction should indicate the particular problem’s relationship to the larger social problem and that larger legislative programme.
- [3. History of the general problem (see note at the head of this checklist).]
4. A brief statement of the problem-solving methodology, showing how it structures the report’s contents, including a brief outline of the report (see below in this chapter on form).

II. The Difficulty the Bill Will Address

1. Mini-introduction.

[Relate the specific difficulty to the larger context; indicate the difficulty statement’s function in the logic of problem-solving, and outline the content of this section (for details on ‘signposts’, see below in this chapter).]

2. The nature and scope of the difficulty’s superficial manifestations as they affect human, physical, or financial resources.
 - [(a) Frequently the social problem manifests itself as a problem in resource allocation. (For example, as underground water pollution, unemployment, inadequate public transportation, or insufficient rural clinics.) If the social problem appears first as a question of resource allocation, the drafters should here describe the nature and scope of the resources’ misallocation.]
 - [(b) Under this heading, as under most of the headings of this checklist, drafters should include the relevant descriptive hypotheses and the data that warrant them.]
3. Whose and what behaviors constitute the difficulty?
 - [(a) Law can only address behaviors. Having identified the misallocation of resources, this section of the report should describe the relevant primary role occupants and implementing agencies and the aspects of their behaviors that prove problematic. (Not infrequently, even the difficulty’s superficial manifestations consist of problematic behaviors, like unfair trade practices, domestic violence, motor vehicle traffic problems or dishonest banking practices. In those cases, the drafters can readily combine sections 2 and 3.)]

(b) In describing the role occupants and their behaviors which comprise the social problem, drafters should differentiate between the several sets of role occupants. (For example, in discussing surface water pollution, rather than lumping the people who dump pollutants into streams and rivers in one group, the drafters should separate them into different sets of role occupants: farmers who permit the run-off from their heavily fertilized fields to flow into streams and rivers; industrial users who dump industrial wastes there; and householders who get rid of household wastes in the same place.) The explanations for each of these sets of role occupants' behaviors undoubtedly differ, so to change those behaviors, the drafters will first have to identify the specific causes for each, and then draft measures to change those causes. Because the problem-solving methodology's solutions logically derive from explanations, to ignore these differences among role occupants and the different causes of their behaviors make it likely that the bill will not induce all the new behaviors needed to solve the problem.]

4. Comparative law and experience (see note at the head of this checklist).]

5. History of the difficulty (see note at the head of this checklist).]

6. Who benefits and who suffers from the present situation.

[A significant part of the social cost-benefit analysis of the preferred solution — that is, the social impact statement — should focus on the new law's probable impact on different groups in society. To articulate the impact of existing law on these groups constitutes a necessary predicate for that social impact statement.]

7. Mini-conclusion.

[Summarize the section; indicate the connection between the statement of the difficulty and the explanations section that follows (for details on 'signposts' see below in this chapter).]

III. Explanations of the Causes of the Behaviors that Comprise the Difficulty

1. Mini-introduction.

[Describe the function of explanations in the logic of problem-solving; and outline this section's contents (for 'signposts' see below in this chapter).]

2. Where relevant, discuss history and comparative law as possible sources of hypotheses as to explanations (see note at the head of this checklist).]

3. With respect of *role occupant A* and *behavior I*:

[The research report should group together the explanatory hypotheses and the evidence relating to each set of behaviors. Occasionally, a drafter may want to vary this practice. For example, if dealing with three role occupants and behaviors all subject to the same existing rules of law, a preliminary section on the law followed by three separate analyses of the OCCUPI factors causing the three different behaviors might provide a more effective organization of the report.]

- (a) The state of the existing law ('rule') as it presently bears on the behavior or role occupant A as identified in the difficulty part.

[Actors behave within a cage of laws. Almost invariably, by the time a law comes to the point of drafting, earlier laws have addressed the difficulty, although frequently under a title different from that under consideration. (For example, suppose the Ministry of Health desires a new law concerning prenatal health and care for pregnant women. No law by that name may presently exist. A great deal of law, however, may bear on the subject, including laws relating to health care delivery generally; ordinary tort law defining the responsibilities of physicians and hospitals to their patient; and even seemingly more remote laws relating to nutrition and work place safety.) Usually, more than one law relates to any given social problem. Drafters must resist the temptation to search only for a law that has a name similar to the title of the social problem in question. Instead, they should take care to discover all the legislation (from the constitution through legislation enacted by national and provincial legislatures to administrative regulations) that bear on their particular problem.]

- (b) The non-legal factors that may affect the problematic behaviors.

(NOTE: In almost every case, one or other of these categories may appear 'empty'; no causal factor of the kind the category suggests seems to exist. Do not feel obliged to say something about a category if, after thinking about it, you have nothing to say.)

- (1) Objective factors:

- (A) opportunity;
- (B) capacity;
- (C) communication of the law;
- (D) the effect of the role occupants' decision-making process on their decisions.

(NOTE: This becomes especially important where a role occupant must decide how to behave in the context of a complex organization — almost always in the case of implementing agencies (see Chapter 4 above).)

- (2) Subjective factors:

- (A) the role occupants interest ('incentives'), including the effect of potential sanctions;
- (B) ideology (values and attitudes) as it affects the role occupants' behavior.

- (c) [Where relevant, the foreign experience as to possible causes of the behaviors at issue (see note at beginning of this outline).]

4. If more than one role occupant or problematic behavior exists, repeat **section 3**, for each successive set of role occupants and their behaviors.
5. If implementing agency behaviors seem problematic, repeat the **steps suggested in section 3** for the implementing agency.

[The behavior of the implementing agency constitutes a factor in the primary role occupant's circumstances that to one degree or another the role occupant takes into account. An implementing agency's officials act in the face of a rule addressed to it. (See Figure 1.1. "Why people behave as they do in the face of a law", on page ____.) An explanation for those officials' behavior in the face of a rule follows the same general structure as an explanation for any other role occupant's behavior in the face of a rule. To analyze the causes of the implementing agency's problematic behaviors, therefore, use the same checklist for non-legal factors mentioned above under [section 3](#).

[Because implementing institutions always comprise complex organizations, however, analysis usually requires focus on the implementing agency's decision-making processes (see [Chapter 4](#) above). Almost invariably, the research report will have to review the causes of problematic behaviors of central agency decision-making officials.]

6. [Foreign law (see note at the head of this checklist).]

7. Mini-conclusion.

[Summarize this section, and reiterate the connection between explanations and solutions. The mini-conclusion may contain a brief list of the explanation for each set of behaviors identified in the difficulty section. That list comprises a summary of the causal factors which the preferred solution — the proposed bill's detailed measures — must alter or eliminate to induce more desirable behaviors (for 'signposts' [see below in this chapter](#)).]

IV. Proposal for Solution

1. Mini-introduction.

[Note the requirements that the logic of problem-solving imposes on the proposed solutions, and outline this Part's contents. For further details on 'signposts' [see below in this chapter](#).]

2. List alternative potential proposals for solutions that logically seem likely to alter or eliminate the causes of existing problematic behaviors.

(a) The persuasiveness of a justification to a considerable degree depends upon whether you have convinced the readers that you have considered all the logically-possible potential measures for inducing the behaviors desired; and that, all things considered, your preferred solution (the specific measures in your bill) really does constitute the best available.]

(b) Drafters may obtain ideas for alternative solutions from three principal sources: comparative law and experience; scholarly books and journals; the drafter's own ideas.]

3. Describe the details of your bill's major provisions.

(a) This section should describe and explain every important provision of your bill. If the bill seems unusually long and detailed, you may consider, in addition to the research report's more general analysis, using an annotated bill to explain specific provisions' details.]

- (b) This section should include a detailed description of the proposed implementing agency, with a special focus on its decision-making processes and the provisions for participation, accountability and transparency.]
- 4. Demonstrate how the preferred solution addresses the causes of the difficulty as revealed in the explanations section.
[In effect, use the ROCCIPI research agenda as a device to predict the behaviors of the bill's addressees.]
- 5. Analyze the costs and benefits of your bill.
 - (a) Economic costs and benefits.
 - (b) Non-quantifiable social costs and benefits.
 - (c) Social impact statement.
 - (1) Impact of the bill of different social groups, especially on the poor, women, children and minorities.
 - (2) Impact of the bill on valued but poorly represented interests, especially on the environment, human rights, and the rule of law and the prevention of corruption.
- 6. Monitoring performance:
 - (a) Show how your bill provides for monitoring and evaluating its implementation.
[Here list alternative monitoring devices and give reason for one(s) included in your bill.]
 - (b) [Foreign experience in monitoring implementation of analogous laws (see note at the head of this checklist).]
- 7. Mini-conclusion (see below in this chapter).

V. Conclusion (see 'signposts' below in this chapter)

5. Notes on writing style for the research report

This section provides specific guidance about how to write the research report (that is, the *style* of the report).

(a) Use clear and simple language

Keep the language of the report clear and simple. The depth of your analysis and quality of logic can easily be lost in an attempt to impress the reader with the size of your vocabulary.

(b) Write clear sentences

You should use the following general rules in crafting clear sentences in your report.

Rule 1. Write brief sentences. These should generally be no more than about 17 words long. More words that that are not likely to be understood by many readers. If a sentence is too long, break it into shorter sentences.

Rule 2. Place the most important concept at the *end* of the sentence. (This is discussed in more detail later in this chapter.)

Rule 3. Keep together the subject and the verb, the parts of a compound verb, and the verb and object. Thus, the sentence *core* should be as follows: *subject – verb – object*.

Rule 4. Use as few conjunctions (such as “and”, “or”, “but”) as possible.

Rule 5. Write sentences using nouns and verbs rather than using adjectives and adverbs.

Rule 6. Avoid connective words and phrases (such as “however”, “thus”, “therefore”, or “It is a fact that...”).

Rule 7. Avoid *passive* sentences. Instead, use *active* sentences.

Rule 8. Avoid the verb “to be”, in any form. (This is discussed in more detail later in this chapter.)

NOTE: Glenn and I are not sure whether the rule about “avoiding the verb ‘to be’ ” applies in Indonesian. If it does NOT apply, please OMIT this rule here. [See pp. 196 and 273 in the English version of the Seidman manual.]

[Optional]
**In-Class Assignment:
Writing Clear Sentences**

Rewrite the following sentences more clearly.

1. “An important reason why local government councilors do not adequately serve their constituents is that they do not really have the necessary experience or knowledge as to how to meet the demands of their jobs.”

2. “Ministers seldom, if ever, hold hearings involving all the stakeholders, nor do they often request notice and comment, prior to promulgating subsidiary legislation.”

(From Seidman, Seidman, and Abeysekere, *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, Exercise 7.2, pg. 197 (English version).)

(c) Use “signposts” to guide the reader through the problem-solving methodology

It is important to provide a brief explanation of the problem-solving methodology in your introduction to the research report and then to provide updates throughout the report on your progress in using the methodology. These updates are called “signposts” because they tell readers where they are, where they have just been, and where they are going next.

For example:

“The previous section identified the social problem of traffic jams in Makassar and identified the behavior of ankot drivers stopping at unmarked stops as a contributing behavior. The problem-solving methodology requires that we next examine what factors influence the ankot drivers to act as they do. By understanding this we can create a policy that will efficiently and effectively deal with the problem.”

(d) Mention sources of information used in the research report

Provide references or citations to the sources of information you use in the research report (such as facts, data, and quotations) using (1) footnotes, (2) endnotes, or (3) bibliographic references. It is best to use a standardized format, if one exists, for citations, but any format that clearly identifies the source so that a reader may locate the information will be sufficient.

6. Rules for drafting policy

As noted at the beginning of this textbook, the focus here is on informal policy development and not the techniques of formal bill drafting. However, there are general rules that should be followed so that all the hard work you put into the research report is translated into an effective policy or law. They are the following:

- Rule 1.* Avoid vague language.
- Rule 2.* Avoid ambiguous words.
- Rule 3.* Cover the entire “domain”.
- Rule 4.* Use rigorously consistent language.
- Rule 5.* Avoid redundancy.
- Rule 6.* Adopt words from related policies or laws.
- Rule 7.* Avoid ambiguous modifiers.
- Rule 8.* Use ‘and’ and ‘or’ carefully.

Rule 9. Keep sentences short.

Rule 10. Use tabulations freely.

Rule 11. Draft in the positive.

Rule 12. Avoid using the verb ‘to be’.

Rule 13. Use vocabulary adapted to the policy’s readers.

Rule 14. Put the most important concepts at the end of the sentence.

Rule 15. Avoid incorporation by reference.

(These rules are adapted from Seidman, Seidman, and Abeysekere, *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, chapter 10, pp. 255–277 (English version).)

(a) Rule 1 — Avoid vague language

Vague language is often language that is open to subjective interpretation. Words like ‘reasonable’ and ‘fair’ are often found in policies that are vague and that lead to problems. Such words could mean something entirely different to different people that read the policy or law and must therefore be avoided whenever possible. Nevertheless, there are limited situations in which words such as ‘reasonable’ may be preferred over an unmanageably long list of more-specific criteria. However, the drafter should try to avoid this; otherwise, the drafter must take into careful account the potential outcome of using this type of vague language.

You must also be careful when not to use overly broad definitions. (For example, using a general term such as ‘vehicle’ when you really mean ‘automobile’ may lead to unintended consequences, since ‘vehicle’ also includes bicycles, motorbikes, trains, airplanes, and boats.)

[Optional]

In-Class Assignment: Avoiding Vague Words

Rewrite the following sentences to correct the vagueness in them.

1. “A landlord shall properly cover a rubbish bin under the landlord’s control.”

2. “A bus shall carry no more than a reasonable number of passengers.”

(From Seidman, Seidman, and Abeysekere, *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, Exercise 10.1, pg. 263 (English version).)

(b) Rule 2 — Avoid ambiguous words

Ambiguous language is a subset of vague language. Language that is *vague* has several, possibly even hundreds, of interpretations, but language that is *ambiguous* has a discrete (or limited) number of possibilities.

For example, a law may require a tax on ‘all Indonesian books’. What does this mean? It can mean, ‘all books written in the Indonesian language’, or it can mean, ‘all books produced in Indonesia’ (regardless of the language in which the book is written).

(c) Rule 3 — Cover the entire “domain”

Sometimes a drafter is unintentionally vague when dealing with numbers and dates. Be precise and cover the entire “domain” when referring to numbers and dates.

For example:

If you were born on October 16, 1984, would you believe yourself fortunate or unfortunate after reading the following provisions (or would you be unsure)?

“(a) All persons born before October 16, 1984, are eligible for a one-time disbursement of Rp. 1,000,000.

“(b) Those persons born after October 16, 1984, are not eligible for this one-time disbursement.”

(d) Rule 4 — Use rigorously consistent language

When drafting a policy or law, never use a different word to mean the same thing, nor the same word to mean a different thing. (For example, if you write a policy or law to prohibit carrying ‘knives’ on school property, do not later in the policy or law refer to knives as ‘weapons’.) To make sure that you don’t make this mistake, have a colleague proofread your work.

(e) Rule 5 — Avoid redundancy

The English legal tradition has many phrases, such as ‘null and void’ and ‘cease and desist’, that seem to confer on the person who uses them the status of having a deep understanding of the law, if not a legal degree. In fact, such phrases are holdovers from the days when those who wrote legal documents were paid by the word and thus

benefited from using multiple words when one would do just as well. Beyond creating extra work, such redundancies make the policy or law less accessible to the layperson by implying that one must obtain a legal education to understand such arcane phrases. Avoid using redundant words and phrases.

(f) Rule 6 — Adopt words from related policies or laws

Along with maintaining consistency within a given policy or law, the drafter should strive to be consistent within a group of related (or companion) laws. If the policy or law you are drafting is one of several (or many) laws dealing with the same general subject (for instance, a set of related traffic regulations), use the terms in the same way as they are used in the existing laws to avoid confusion.

(g) Rule 7 — Avoid ambiguous modifiers

Take care when using modifiers (that is, adverbs, adjectives, and past participles). Sometimes placement of the modifier may leave the reader wondering what, precisely, the modifier actually modifies. (For example, consider the sentence, “The girl gave the balloon to the boy filled with helium.” Who or what is “filled with helium”? The balloon or the boy?)

Be particularly careful when using modifiers near a series of items. (For example, consider the sentence, “This Act applies to charitable hospitals, clinics, and medical facilities with more than 100 beds.” Does “charitable” apply to hospitals only or to hospitals, clinics, and medical facilities? Similarly, does “with more than 100 beds” apply to medical facilities only, or to hospitals, clinics, and medical facilities?)

In short, ensure that there is no doubt about what each modifier (whether word or phrase) actually modifies.

[Optional]
In-Class Assignment:
Avoiding Ambiguous Modifiers

Rewrite the following sentences to correct ambiguous modifiers.

1. “A claimant shall give notice of intention to hold the city liable upon his claim within two weeks after the accident.”
2. “Once a valid collective bargaining agreement has been entered, neither employer nor union may rescind the contract because of hardship.”

(From Seidman, Seidman, and Abeysekere, *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, Exercise 10.4, pg. 267 (English version).)

NOTE: Glenn and I are not sure whether the rule on “ambiguous modifiers” applies in Indonesian. If it does NOT apply, please OMIT this rule here and in the summary at the beginning of this section; also, omit the in-class assignment related to it. [See pp. 266–267 in the English version of the Seidman manual.]

(h) Rule 8 — Use ‘and’ and ‘or’ carefully

The word “and” is a conjunctive word. The word “or” is a disjunctive word. You should be very careful when using “and” or “or” by assessing whether the meaning requires a disjunctive word (for instance, ‘A or B’), a conjunctive word (for instance, ‘A and B’), or an overlap of both (for instance, ‘A or B, or both A and B’). Whatever the case, make sure that the language used makes the meaning clear and does not lead to ambiguity.

For example:

1. Consider the ambiguous sentence, “Husbands *and* wives may execute the sale of real property.” Clearly a husband and wife together may execute a sale, but can a husband or wife *alone* execute a sale?

2. Consider the ambiguous sentence, “Husbands *or* wives may execute the sale of real property.” Clearly a husband alone may execute a sale and a wife alone may execute a sale, but may they both *together* execute a sale?

3. Now consider the unambiguous sentence, “A husband or a wife, or both a husband and a wife, may execute a sale of real property.” Clearly any combination of husband alone, wife alone, or husband and wife together may execute a sale.

NOTE: Glenn and I are not sure whether the rule on “‘and’ and ‘or’” applies in Indonesian. If it does NOT apply, please OMIT this rule here and in the summary at the beginning of this section. [See pp. 267–268 in the English version of the Seidman manual.]

(i) Rule 9 — Keep sentences short

Keep sentences short. The longer your sentence, the greater the likelihood of violating one or more of these rules when writing your policy. Usually 40 to 50 words, at the most, should allow you to get

your idea across clearly. Thus, you should break long sentences into shorter ones.

(j) Rule 10 — Use tabulations freely

Using tabulation (such as enumerated lists or bullet points) to list elements of the policy or law can reduce wordiness and aid in understanding.

For example:

The sentence, “A local government shall maintain national roads, local roads, bicycle paths, and footpaths,” can be modified to read as follows:

“A local government shall maintain the following:

“(1) National roads.

“(2) Local roads.

“(3) Bicycle paths.

“(4) Footpaths.”

(k) Rule 11 — Draft in the positive

You should nearly always draft in the *positive*, not the negative. (For example, consider the previous sentence, but drafted in the negative: “You should nearly always, not draft in the negative, but in the positive.”) Drafting in the positive tends to lead to shorter sentences that are easier to read and that lead to less confusion.

[Optional]

**In-Class Assignment:
Drafting in the Positive**

Rewrite the following sentences in the *positive*.

1. “Indigent persons, other than those with no children, may be sheltered in hotels at the expense of the Department of Welfare.”

2. “No person who is not a citizen may fail to register annually as such.”

(From Seidman, Seidman, and Abeysekere, *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, Exercise 10.7, [pg. 273 \(English version\)](#).)

(l) Rule 12 — Avoid using the verb ‘to be’

In English, the verb “to be” is highly ambiguous. It can mean ‘exist’, ‘shall be considered as’, ‘has the characteristics [or

qualifications] of’, and many other things. It is also used in the passive voice, which should be avoided whenever possible in favor of the *active* voice. In drafting a policy or law, another verb (other than “to be”) can almost always be substituted to produce a more precise meaning. Avoid using the verb “to be”.

NOTE: Glenn and I are not sure whether the rule on “using the verb ‘to be’ ” applies in Indonesian. If it does NOT apply, please OMIT this rule here and in the summary at the beginning of this section. [See pg. 273 in the English version of the Seidman manual.]

(m) Rule 13 — Use vocabulary adapted to the likely reader

Adapt your language to the anticipated audience, with the following prohibitions:

(1) Do not use legalese. [*For English version: Avoid words and phrases such as ‘herein above’ and ‘hereinafter’.*] [*For Indonesian version: Avoid words and phrases such as ‘_____’, ‘_____’, and ‘_____’.*] Such words do nothing to add to the clarity of the rule and may make it less accessible to average citizens.

NOTE: Please insert 2 or 3 examples of Indonesian “legalese”. There may be some in the Indonesian version of the Seidman book.

(2) Avoid obscure, arcane, uncommon, or foreign words.

(3) Never use a “deeming” provision (for instance, ‘A is *deemed* to be B’). These are provisions that establish a “legal fiction”. Avoid these devices.

For example:

Consider the following “deeming” provision: “In this Act, horse-drawn carriages are *deemed* to be automobiles.” Imagine how little confidence a layperson would have in public officials if those officials actually believed that a horse-drawn carriage was an automobile. Second, if you find yourself grouping horse-drawn carriages and automobiles together in the same rule, maybe you should re-examine the premise of your policy or law. You should deal with this directly by rephrasing the provision as follows: “All rules applying to automobiles apply to horse-drawn carriages.”

(n) Rule 14 — Put the most important concepts at the end of the sentence

As with the research report, the most important concepts belong at the *end* of the sentence. Conversely, place subordinate clauses and concepts first.

For example:

Consider the sentence, “The judge shall, after the parties have presented their cases, decide the matter promptly.” The most important part of the sentence (“The judge shall ... decide the matter promptly”) is split up between the beginning and the end of the sentence. It may be rewritten (and improved), as follows: “After the parties have presented their cases, the judge shall decide the matter promptly.”

(o) Rule 15 — Avoid incorporation by reference

It is tempting for drafters simply to refer to, for instance, the definition of a term in another law, instead of reproducing the definition in their own policy or law. This may save time for one drafter, but adds to the time spent by every citizen or lawyer that refers to the law later. Often, instead of scrambling to find the law referred to, readers wrongly assume they know the definition, which may lead to confusion.

Teaching Notes

Critique Groups

Critique groups are a crucial part of learning the problem-solving methodology. The critique groups provide students with a peer review of their work and the opportunity to exercise their knowledge of the methodology by engaging in constructive criticism of others. You may find that after several weeks of critique groups, student knowledge of the methodology will be greatly increased.

The students should now have all the information they need to complete a research report, including a proposed policy. For the remainder of the course they will hone their skills by actually working on a social problem in their community or on one of the problem scenarios provided in the back of the textbook.

At the end of this lesson, you should break the class into groups corresponding to the number of social problems or course scenarios chosen. Each student will be responsible for one or more sections of the research report and will be required to present that work to the group at a critique session that will take place during normal class hours. You may assign the section(s) or you may want to permit each group to choose who will work on each section.

Critique groups should begin 2 weeks after Lesson 7 (this lesson), to allow the students working on the first sections to conduct research and write their portions of the report. You may want to meet with these students before they present their sections to the group, to ensure that they are on the right track. The strength of the first critique group meeting will often determine the quality of the remaining critique group meetings.

One or two days before each critique group meets, the student responsible for writing a section to be critiqued should present the written section to the other members of the group.

At each critique group meeting, the student will make a brief oral presentation of his or her draft section. The other students will then ask questions regarding the section and provide constructive criticism. The student who is presenting will be expected both (1) to defend the reasoning of the draft section, and (2) to incorporate suggestions into a final version of the section.

Students who are not presenting are expected to be prepared to offer constructive criticism. (You may require them to write a one-paragraph critique before each critique group meeting to ensure that they are participating.) These students should also be reminded that the success of the group's work will depend on their well-reasoned suggestions.

Critique group sessions should be scheduled so that all students have a chance to present their sections by the next-to-last class meeting. When all of the sections are completed, each critique group should combine them into a single final research report.

During the last class meeting, each critique group will have a chance to present its research report to the other critique groups. If a group researches actual community social problems, it would be useful for the stakeholders or government officials concerned with the problem to be present for this presentation.

7. Further reading

The following materials provide further information about the issues discussed in this chapter and may be referred to for additional information.

[English:] Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change* (English version), Kluwer Law International, Boston, Massachusetts, 2001. Chapter 4 (pages 85–123), chapter 7 (pages 187–201), and chapter 9 (pages 231–254).

[Indonesian:] Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change*

(Indonesian version, 2d ed.), ELIPS II National Library, Jakarta, 2002. Chapter 4 (pages ___-___), chapter 7 (pages ___-___), and chapter 9 (pages ___-___).

NOTE: For all chapters in this book, please only reference the version of the Seidman book appropriate to the version of this textbook (that is, English or Indonesian, respectively).

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*, online at <http://www.bu.edu/law/lawdrafting/manual/>, 2003. Chapter 9.

Manasse Malo and Sri Trisnoningtias, *Community Research Methodology*, PAU-IIS, Universitas Indonesia, Jakarta.

NOTES:

- 1. Please correct the non-Seidman reference, if necessary.**
- 2. Please add references to any other appropriate (Indonesian) materials.**
- 3. Please do this for all the chapters.**