CHAPTER 5.

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

1. Chapter contents

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.

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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	Rule		
O	Opportunity		
C	Capacity		
C	Communication		
I	Interest		
P	Process		
I	Ideology		

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

	Factor:	Hypothesis or Explanation:	Possible Solution(s):
P	Peraturan		
K	Kesempatan		
K	Kemampuan		
P	Proces		
K	Komunikasi		
K	Kepentingan		
I	Ideologi		

Teaching Note

Class Activity

The ROCCIPI categories naturally lend themselves to certain types of solutions. Write the ROCCIPI 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.

[Indonesian version:] 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 ___–___.

NOTES:

1. **For the English version of this manual, please use only the reference to the English version of the Seidmans' book (above).**
2. **For the Indonesian version of this manual, please only use the reference to the Indonesian version of the Seidmans' book (above).**
3. **Please do this for all the chapters.**

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 6–8.

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