

TECHNICAL ASSISTANCE COMPLETION REPORT

Division: SESS

TA No. and Name TA 3761-INO: Regulatory Framework for Private and Public Water Supply and Wastewater Enterprises			Amount Approved: \$790,000	
			Revised Amount:	
Executing Agency: Ministry of Settlements and Regional Infrastructure	Source of Funding: ACCSF		TA Amount Undisbursed \$32,798	TA Amount Utilized \$757,202
Date			Completion Date	
Approval 6 Nov. 2001	Signing 5 Feb. 2002	Fielding of Consultants 3 April 2002	Original 31 March 2003	Actual 31 December 2003
			Closing Date	
			Original 31 March 2003	Actual 31 March 2004
Description				
<p>Service provision of Indonesia's regional water supply enterprises (PDAMs) has increasingly deteriorated over the last few years due to the economic crisis, weak internal management, and a lack of support from regional legislative councils for needed tariff increases that makes rehabilitation and expansion of assets very difficult. At present, most of Indonesia's PDAMs are technically bankrupt, with operations continuing at a bare minimum of maintenance. Wastewater management has so far been separately handled by local governments on a non-cost recovery basis, but PDAMs are increasingly expected to assume greater responsibility for the wastewater subsector.</p> <p>The situation of PDAMs has been aggravated further with the introduction of decentralization through laws 22 and 25 of 1999 and full implementation of the related administrative reform since January 2001 that devolved the responsibility for regional infrastructure provision to regional governments while at the same time significantly reducing direct central Government funding for regional infrastructure. Regional governments are acting as owner, operator, and regulator of these activities, which is creating an obvious conflict of interest. Efficient sector regulation to balance the interests of operators and consumers is increasingly seen as necessary, particularly as the sector is trying to attract more private sector investment, which requires transparent regulation, a level playing field, and a sound legal base for investment contracts.</p>				
Objectives and Scope				
<p>The objectives of the technical assistance (TA) were to (i) help develop and implement a regulatory framework, and (ii) establish a regulatory structure to facilitate credible, independent, autonomous, accountable, and transparent regulation for water supply and wastewater enterprises in Indonesia. The long-term goal of the TA was to promote good governance in the water supply and wastewater sector and to create enabling conditions for private sector participation (PSP).</p> <p>The TA comprised three components: (i) analysis and development of a Water Supply Sector Policy Statement for Economic Regulation, (ii) selection of institutional options for regulation and preparation for implementation, and (iii) implementation of the regulatory framework and establishment of a regulatory body(ies). Component 1 involved an in-depth review and analysis of existing and draft laws, regulations, decrees, and policies related to the sector and present responsibilities for and effectiveness of regulation, and a review of international good practice in water sector regulation. Under component 2, institutional options for regulations were to be prepared based on stakeholder consultations to identify a preferred institutional option. Component 3 was to cover the preparation of guidelines for the establishment and operation of the regulator(s) and their duties, responsibilities, powers, and authorities. The design of the TA is generally rated as adequate.</p>				
Evaluation of Inputs				
<p>The TA provided for 39 person-months (pm) of consulting services, including 19 pm of international consultants and 20 pm of domestic consultants. Actual consultant input was 40.8 pm, including 19.8 pm of international consultants and 21 pm of domestic consultants, and was considered adequate. Overall, the consultant's performance is rated satisfactory, concurrent with the rating stated in the performance evaluation of the consulting firm.</p> <p>The TA was to be executed by two directorates within the Ministry of Settlement and Regional Infrastructure (since October 2004: Ministry of Public Works), the Agency for Construction and Investment Development represented by the Center for Infrastructure Investment Development (CIID), and the Directorate General for Urban and Regional Development (DGURD). While CIID provided outstanding support and its performance was highly satisfactory, DGURD's performance was only partly satisfactory. CIID supported the TA team in terms of qualified counterpart staff and timely submission of documents and reviews, and liaised effectively with other ministries and legislative stakeholders to set up a regulatory framework for the sector. ADB's supervision of the TA consisted of one inception and three review missions with corresponding tri-partite meetings, and included participation in several stakeholder workshops and comprehensive reviews of reports produced by the TA. ADB's performance is rated satisfactory.</p>				

Evaluation of Outputs

The consultants prepared an inception report and an interim report on the Design of a Regulatory and Institutional Strategy under the first component, a Regulatory Framework Report and draft Regulatory Policy for Water Supply and Wastewater Services for the second component, a report on Organizational Functions and Structure of the National Regulatory Body for the third component, and a Final Summary Report. The quality of reports was generally very good, based on thorough analysis of best practices and extensive stakeholder involvement. Comments were readily addressed in revised versions of the reports.

Drawing on international experience and based on the work of the first component, five options for the establishment of a regulatory framework were identified and analyzed in the interim report. Analysis and extensive stakeholder consultations led to a two-tier option combining a national regulatory body and local regulatory functions, which was agreed upon with the Government as the best option to pursue. It recognizes the primary role of local governments in the provision and regulation of water services while establishing an overarching national regulatory framework to promote a consistent approach to transparent regulation throughout the country. Regulatory functions at the national and regional level were defined and discussed in detail with stakeholders to create a broad consensus.

It was decided after the interim workshops that the Water Resources Law (which was under consideration in the Parliament at the time of the TA and has since been passed as Law No.7/2004) was the best near-term option to establish a national regulatory body for the water supply sector as the law was expected to provide the best option to anchor the regulator body at the highest possible level. Details on the regulatory framework would then be set out in an implementing regulation (Government Regulation or 'PP', using its Indonesian acronym) and/or ministerial decree based on the law. CIID and the consultants spent considerable time with policy makers and key parliamentarians to successfully promote a better understanding of water-related regulatory issues, which materialized in terms of a clause on a national regulatory body in the new Water Resources Law. However, DGURD successfully lobbied for the body to be under the control of the Ministry, rather than reporting directly to the President as proposed by the TA. The related PP has not yet been drafted.

Overall Assessment and Rating

Overall, the TA is rated 'successful'. The TA was 'highly relevant' in terms of the topical relevance and the chosen approach to resolve prevailing issues. The TA was 'efficacious' in terms of its use of resources, allowing for slightly more person-months of consulting services than anticipated and producing a significant quantity of high quality outputs. The TA is considered 'partly effective' in terms of its impact on the EA, and 'partly sustainable' due to the last-minute deviation from the agreed-upon set up for the national regulatory body, which will impact on its ability to act independently from the line ministry. Interaction between the TA team and Government counterparts was fully satisfactory, with several ministries (the EA, BAPPENAS, and the Coordinating Ministry for Economic Affairs) indicating that they saw the TA approach—intensive and broad-based stakeholder involvement to clarify issues and strategies from the very beginning to the end—and resulting progress as a model for future TAs, in particular for those dealing with new policy issues.

Major Lessons Learned

While the TA design was adequate in terms of its sequencing, it was overambitious in trying to establish the regulatory framework and regulatory bodies within a period of 14 months. Water supply regulation is a new policy area in a sector mired with difficulties. Developing the legal framework, in particular the implementing regulation, will take some time and will require continuous awareness building activities. Misunderstanding the role of the regulator is widespread among policy makers and the general public. While international experiences provide a useful reference for how other countries have developed their regulatory structures, the approach adopted in a specific country must be tailored to its particular legal and political context. Further, lessons from Indonesia and from other countries (i.e., Sri Lanka) show that a champion is necessary to advance the agenda, both technically and politically and that the removal of such a champion can jeopardize the outcomes achieved.

Recommendations and Follow-Up Actions

Recommendations, reports, and materials produced by the TA are relevant and can be used by ADB and other development partners as cornerstones for a regulatory framework in the water sector. The draft policy and regulations developed under the TA are highly practical and offer up-to-date value. Additional TA would be required to undertake follow-up actions such as the implementation of the action plan as outlined in the Final Summary Report. Any follow-up would be conditional to a clear government commitment to follow through with the agenda as demonstrated by the preparation and approval of the relevant PP and/or ministerial decree.