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Evaluation of the Effectiveness of Public Administration Policies in the Development of Stringent Legal Framework: An Analysis of the Criminal Justice System in Indonesia

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Abstract

Most of Indonesia's criminal justice system was established during the Dutch colonial era. In response to Indonesia's diverse society's changing requirements and values, the government intends to amend the criminal justice system to improve public administration. This study aimed to examine the efficacy of public administration by analyzing the criminal justice system of Indonesia. The research was normative and utilized legal documents, legislation, government documents, journal articles, and books as resources. The analysis demonstrated that the Indonesian criminal justice system must incorporate national identity and social values. The new Criminal Code includes some elements of the restorative justice system and aims to resolve the shortcomings of the existing law; however, failure to recognize human rights and protect minorities and local communities can impede effective public administration. Following national values, the criminal justice system must uphold human rights, safeguard local communities, and adopt restorative justice practices. The study substantially contributes to the existing literature and provides government and policymakers with actionable recommendations.

Keywords: Criminal justice system, Criminal code, Public Administration, Legal framework, Indonesia

Introduction

A little over ten years ago, Indonesia emerged from a period of dictatorship and severe economic collapse to become a self-confident, rapidly developing nation with a growing influence on international affairs. It is the fourth most populous country in the world, with 234 million people, and shares a long border with Australia. The average annual income in Indonesia is approximately \$4000, and significant progress has been made in eradicating poverty. However, substantial regional disparities persist, and 110 million people require assistance to survive on less than \$2 per day. Indonesia must address

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severe institutional issues. While small-scale corruption permeates many facets of society, the radical decentralization process has posed formidable obstacles to developing subnational capacity. Even though there have been gradual political changes at the central level, the previous administration's vested interests continue to exert influence (Cox, Duituturaga, & Sholikin, 2012). In response to past arbitrariness, the concept of a legal framework gained prominence in the 19th century (Huda, 2005). This concept is enshrined in the Constitution of 1945, which emphasizes the protection of human rights and guarantees all citizens equality before the law and the government.

In addition, it stresses the importance of unconditionally upholding the law and the government (Gumbir & Nurhayati, 2016). Despite the Indonesian government's unwavering commitment, corruption scandals are frequently reported in the media, making it difficult to combat the issue effectively. Reforming Indonesia's justice system has proved to be a challenging endeavor for the executive branch of government. During the previous administration, Indonesia was governed by a 1945 post-independence Constitution that imposed significant restrictions and heavily favored the executive branch. Consequently, beginning in the 1950s, these rights were not subject to judicial review, even though the Constitution contained some provisions on individual rights.

Consequently, this Constitution failed to protect judicial independence. Due to the executive's strict control over the judiciary, the general public's courts use decreased substantially, and the legal profession's reputation suffered (Cox et al., 2012). As mandated by the Constitution, the provision of public services and the expansion of various sectors reveal the type of public administration a nation employs. The government develops strategies and programs with annual, mid-term, and long-term goals and objectives to fulfill this constitutional requirement.

In addition, it designs efficient institutions and management systems, as well as several policy instruments. To achieve these objectives, the government may encounter varying failure risks due to internal and external obstacles (Keban, 2017). These failures should be viewed as valuable instructional opportunities by government employees. When goals for quantity, quality, and timeliness are attained, government leaders should conduct a thorough evaluation. The outcomes of this evaluation should be considered essential inputs for future organizational, management, and policy-development processes (Keban, 2017). According to Marc Ansel (Arifah, 2011), the political application of criminal law involves using science to develop or enhance positive legislation over time. To create more effective policies for the future, it is essential to evaluate the application of current rules or positive laws regulating carding violations (Adhi & Sopyono, 2021). The Pancasila legal framework incorporates the concepts of the Rechtsstaat and the rule of law because the Republic of Indonesia is a legal state. By implementing these concepts, the state ensures that all Indonesians have the same rights, responsibilities, and legal protections (Gumbir & Nurhayati, 2016). Positive law is the primary legal framework for state apparatuses worldwide, including Indonesia, to carry out their obligations and exercise their powers. This prevents arbitrary actions and ensures that the government bureaucracy operates according to the government's established service standards. This study aims to assess the efficacy of public administration policies in developing a stringent legal framework for Indonesia's criminal justice system.

Literature Review

Putting in place restrictions on power can serve the public interest (Gumbir & Nurhayati, 2016). The restriction of executive (government) power in administrative law is not solely predicated on the legality principle. There are available additional techniques or resources for limiting the authority of state administrators or government officials. These restrictions take the form of obligatory laws or discretionary decisions. Sibuea (2010) asserts that several mechanisms can be employed to limit the authority of the government or state administration officials, including assessing existing policies. The interaction between the general public and the criminal justice system has increased significantly in the United States over the past few decades. From 1960 to 2010, the prison population per 100,000 individuals increased from 118 to 519. Recent statistics indicate that 3% of adult males have been incarcerated, and 8% of adult men have been convicted of a felony; these percentages are especially notable in minority communities (Shannon et al., 2017). According to the findings of Holzer, Raphael, and Stoll (2007), Mueller-Smith and Schnepel (2021) and Pager (2003), individuals with a criminal history face significant obstacles when seeking employment. The principles of Marques et al. (2021) guide the development of public administration in the digital era. This principle mandates the adoption of an open-service model with a primary emphasis on establishing and guaranteeing transparent regulations, equality, and security for all participants. It also involves maintaining vital infrastructure and progressively delegating the responsibility of providing services directly to public and private organizations. Current difficulties in Kyrgyzstan, such as the political and socioeconomic instability caused by ongoing reforms, necessitate higher standards for the quality of public administration in the country's legal policies. When assessing the effectiveness of a management system, the degree of management function duplication is a crucial indicator and factor to consider. The existence of multiple levels of government, such as the republican, regional, and district levels, in a unitary government like Kyrgyzstan, which has a relatively small population and a significant budget deficit, suggests the existence of unnecessary intermediate layers that duplicate functions despite ongoing administrative reform within the government bodies. Due to this situation, budgetary funds are not allocated effectively, and the formulation and implementation of government decisions require excessive time (Batyrbayev et al., 2021).

The literature generally accepts that it is unacceptable for distinct governing bodies to perform the same duties twice (Batyrbayev et al., 2021). However, overlapping authority, particularly in the supervision domain, ultimately undermines the management system's effectiveness. The dependence of public administration on governmental authority, governmental bodies, and established legal principles distinguishes it from other administration forms (Kuldysheva et al., 2021). Political leadership, legislation, and legal norms are most important because they represent the common interests of social groups and individuals. Since 2003, state legislatures in the United States have been actively passing legislation to combat human trafficking. Even though human trafficking is unlawful in every state, the penalties and related legal measures vary significantly. To strengthen the criminal justice system's response to this issue, all fifty states passed legislation criminalizing human trafficking in 2003. To

combat human trafficking within their borders, states have hurriedly enacted additional measures beyond criminalization.

Numerous state laws target human trafficking during this period, but there is a shortage of research on how these laws influence the identification of victims and prosecution of offenders. Laws have been enacted without sufficient knowledge of which amendments are enforceable and effective in resolving the problem. As non-governmental organizations, state legislators, and the general public continue to pressure states to pass more robust legislation, it is crucial to examine the specific provisions of these laws that prove most effective in achieving the desired outcomes through a criminalization approach (Farrell, Bouché, & Wolfe, 2019). The difficulties that state officials face when issuing discretionary policies may indirectly affect the duties and operations of developing nations. This may hinder the construction of new infrastructure and economic growth. The use of discretion is clouded by the fact that discretionary policies are being criminalized despite falling under administrative law. When a policy decision and its implementation can result in jail time or other legal repercussions, this ambiguity creates the impression that there are no distinct boundaries. The issues stem from two regulatory provisions addressing power abuse in various legal contexts. Government Administration Law Number 30 Year 2014 and Abuse of Power Law Number 31 Year 1999, address the issue of abuse of power. 2001 saw the passage of Jo Law Number 20 on Combating Corruption (Gumbir & Nurhayati, 2016).

Method

The present study is phenomenological and uses a normative research methodology to achieve its objectives. This paper aims to discuss efficient public administration by analyzing the Indonesian criminal justice system. The researcher evaluated the Indonesian criminal law code by comparing the new and previous codes. The researcher utilized resources, such as secondary resources, such as books and journal articles, and primary sources, such as statutes and legal documents. The purpose was to provide comprehensive information regarding the legal norms and principles of Indonesia's criminal justice system. The researcher used a qualitative approach to analyze articles and documents to collect pertinent data. Initially, websites and research services were used to obtain and access legal documents, including legislation, previous studies, and regulations. LexisNexis, Hein Online, and Westlaw are the primary legal research services that the author utilizes. The legal analysis aimed to understand Indonesia's legal framework and the criminal justice system to make useful recommendations.

Prior researchers have employed comparable strategies for data collection (Hammar, 2022; Scheuerman, Griffiths, & Medwed, 2022). Using journals and legal research services such as LexisNexis and Westlaw to acquire data is prevalent (Hammar, 2022). The researcher conducted a literature review to provide context by examining the international criminal justice system. The study's primary findings and discussion involved an examination of the criminal justice system in Indonesia. The research provided significant recommendations and ramifications through its analysis in light of the importance of effective public administration policies in the nation.

Findings and Discussion

The following section provides the findings and discussion.

- *Criminal Justice System in Indonesia*

According to Article (1) 3 of the 1945 Indonesian Constitution, the nation is recognized as a state of law with regulations based on the Pancasila (Indonesia) values. Three primary components characterize the current condition of the law. First, the authority must be exercised on a legal basis. The judiciary is independent, judicial decisions compel government agencies, and society has the right to challenge government actions in court (Faiz, 2016). According to the Pancasila-based state of law, the nation's collective goals must be prioritized for effective public administration (Dewantara et al., 2019). The rule of law framework is supported by emphasizing the significance of the participation of all individuals in the legal system.

(Lindsey & Pausacker, 2020) The Indonesian criminal justice system utilized the "Criminal Code" established during the colonial period. The Code was drafted during the Dutch colonial period, and criminal law determines unlawful and punishable acts and events (Lindsey & Pausacker, 2020). It is a codified penal law compiled in the "Kitab Undang-Undang Hukum Pidana" (KUHP) book of the law. This Code applies to every individual.

Since Indonesia's independence, the Code has grown more complex, and certain aspects of Indonesian law have been influenced by common law traditions (Lindsey & Pausacker, 2020). The "Criminal Procedure Law" states that the country's criminal justice system adheres to a combination of the Continental European System and the Adversarial System. Notably, Islamic law is entirely implemented in the province of Aceh under the stipulation that it must be aligned with national law (Hakim et al., 2021). The criminal law of Indonesia extends its jurisdiction to foreign nationals who conduct crimes on Indonesian soil ("Indonesian Penal Code," 1981). The law applies to Indonesian citizens who commit crimes outside the region's borders. This practice is consistent with the "lex loci delicti," which states that the perpetrator is subject to the law of the region or location where the crime was committed (Yasir, Widodo, & Ashar, 2022). The Indonesian criminal justice system imposes punishments for crimes, including the death penalty, imprisonment, confinement, criminal fines, and the revocation of certain rights. Since 2014 the "Child Protection Law" was amended, and the Indonesian criminal justice system has emphasized restorative justice more (Jufri, Nazeri, & Dhanapal, 2019).

- *Revising the Criminal Justice System*

For the criminal justice system in Indonesia to be reformed, traditional customary law must be reinvested to reflect the changing dynamics. The reform is governed by a reorientation process based on sociopolitical and sociocultural values from the perspective of legal politics (Hermanto, 2021). The purpose of the new draft of the Indonesian Criminal Code is to address the diverse social, cultural, and legal needs and achieve the national objective of legal unification that incorporates and upholds the Pancasila principles discussed previously (Hermanto, 2021).

The overarching objective of the reform was to preserve and create new national laws based on efficient public administration and national development while also

recognizing Indonesia as a multicultural state. The development of the national legal system must be facilitated by a reform process guided by three primary objectives. First, abandoning colonial-era laws, reforming the statutory laws, and creating new laws reflecting the national identity, social values, and interests of the country's society (Antara, Budiana, & Sadnyini, 2021; Hermanto, 2021). Despite the controversy and debate surrounding the newly revised Code governing the Indonesian criminal justice system, the Indonesian parliament introduced and passed a new criminal Code with revised provisions ("Law No. 1 of 2023," 2023). The Criminal Code was superseded by Law 1/2023 to move away from its Dutch colonial roots.

The law's recognition of corporate criminality in Indonesia represents a significant and noteworthy change. In contrast to the previous Code, which did not recognize corporations as legal subjects, the current provision extends criminal liability to corporate management and individuals. According to Article 46 of Law 1/1/2023, the corporate act is "a criminal act committed by entities or various individuals, including members of a corporation's management, a person who gives the order to commit the crime, and the controller or beneficial owners of the corporations." (Hertiawan et al., 2023) As for punishments, corporate crime is subject to fines and additional sanctions, such as confiscation of commodities, dissolution of the corporation, full or partial disclosure of business activities, and prohibition from engaging in certain activities (Hertiawan, Sucipto, & Sudrajat, 2023).

Similarly, incorporating restorative justice is an important aspect of the new Criminal Code (Wirawan, 2023). According to Indah (2023), diversifying punishments is essential to restorative justice. Judges have been instructed to prioritize justice with the introduction of corporate criminal liability, and a new strategy for converting life sentences to provisional ones has been mandated. Importantly, even though the Code has upheld the death penalty, Article 100 stipulates that the penalty will not be imposed if the convict demonstrates remorse and good conduct within ten years (Hertiawan et al., 2023).

Notable is the restorative justice provisions in the new Criminal Code. The overcapacity of Indonesian prisons necessitated the implementation of new alternatives to incarceration, such as community service and supervision, as well as the reduction of short-term incarceration (Saputra, 2021). The government stated that restorative justice makes the criminal justice system more humane because it is committed to making prison sentences the last measure in law enforcement, as opposed to its previous position that prison sentences are the only measure (Zulfikar, 2022).

- *Criticisms in Criminal Justice System and Challenges for Public Administration*

The Indonesian criminal justice system has been criticized for its discriminatory treatment of minorities and minors (Lindsey, 2019). The provisions of the Code that recognize "living law" or "Adat" have been the subject of conjecture. The primary provision is Article 2 of the provision dealing with the living law ("Law No. 1 of 2023," 2023). Article 1 (1) states that "no action may be subject to criminal punishment or prosecution unless there is a criminal provision in a law that was in effect before the action occurred." However, Article 2 (1) specifies that Article 1 (1) has no bearing on the application of "living law," and Article 2 (3) mandates that the government issue a

regulation governing the procedure for postulating living law. However, no official list of "living laws" can contribute to discrimination in the application (HRW, 2022) in Document No.:29 /Pol-II/II/2023, the Government of Indonesia argued that Article 2 does not "diminish legal certainty" and cannot be used to discriminate against minorities (Indonesia, 2022). In addition, the government described Article 2 as a significant milestone for Indonesia, as the Hukum Adat is now officially recognized at the national level, demonstrating that law enforcement officials are required to respect the "customary law" of the local community (Indonesia, 2022).

Government policies must be transparent and accountable and enable citizens to express their concerns, voices, and opinions for effective public administration (Flynn & Freiberg, 2018). The Indonesian Criminal Code has been criticized for restricting freedom of expression and cultural participation. According to Articles 218 to 220 of the Criminal Code, anyone who assaults the president's honor is subject to criminal charges and up to three years in prison (HRW, 2022). Criticism of such provisions focuses on the public's right to freedom of opinion and expression under international law (Amnesty International UK, 2022; Hammar, 2022). Nonetheless, the government justifies the provisions because disinformation can harm democracy, lead to polarization, and erode public confidence (Indonesia, 2022).

Recommendations

The new Criminal Code contains new provisions that can be viewed as positive amendments; however, criticism still surrounds the Code, as the criminal justice system in Indonesia requires further strengthening to ensure effective and equitable public administration. The following recommendations are based on the study's findings and discussion.:

- *Evaluation of legal frameworks.*

It is recommended that legislators prioritize the periodic evaluation and revision of legal frameworks. The new Criminal code was in development for a considerable amount of time. Given shifting societal values and human rights norms, periodic evaluations must be conducted to realign the rules of law with the challenges of the criminal justice system.

- *Enhance human rights protection.*

The foundation of public administration must be protecting human rights; accordingly, policymakers should prioritize bolstering the protection of human rights within the criminal justice system. Freedom of expression is a crucial aspect of human rights protection. Consequently, the current provisions restrict freedom of speech, and the government must prioritize protecting the freedom of individuals and regulating misinformation that could harm the government or the president's reputation. Instead of restricting the right to free speech, legislators must ensure that disinformation is regulated and public trust is developed by applying human rights principles.

- *Promoting Restorative Justice Practices*

Restorative justice has not been entirely adopted (Sukardi & Purnama, 2022). The new provisions added to the Code are meant to encourage restorative justice. To this

end, it is recommended that public policies and resource allocation prioritize the development of rehabilitation and community service programs to reintegrate ex-offenders into society.

- *Strengthen Collaboration with Local Communities*

Article 2 of the Code was created to ensure that local communities are respected and that conflicts between law enforcement and local communities are minimized (Lindsey, 2019). The preservation of local communities and minorities within the criminal justice system must be strengthened. Consequently, mechanisms for dialogue and participation of minorities and local communities must be assured and taken into account in developing and implementing laws and regulations.

- *Promote Transparency and Accountability*

For effective public administration, the government and policymakers must prioritize transparency and accountability within the criminal justice system. It is essential to strengthen the surveillance and evaluation of law enforcement agencies to ensure compliance with legal requirements. The system must be supported by implementing the rule of law and an independent judiciary that promotes transparency and accountability to prevent power abuse in public administration.

Conclusion

Through a qualitative secondary analysis, the present study sought to discuss key aspects of the criminal justice system in Indonesia and highlight recent reforms in the country. The nation's legal system is based on the Pancasila values, which emphasize the exercise of power within the legal framework and the significance of judicial independence. The criminal justice system of Indonesia is profoundly rooted in the colonial era, and the criminal justice system reforms are intended to align the national criminal law with society's changing values to promote effective public administration.

Significant provisions of the new Criminal Code include the recognition of corporate crime, which holds corporations and their management accountable for criminal acts. Similarly, the restorative justice system has been extensively discussed, and the new Code incorporates restorative justice principles by emphasizing diverse punishments, short-term imprisonment, and alternative measures such as community service. According to the government, the national recognition of "living law" is intended to establish respect and requires law enforcement officers to respect the customary laws of local communities. However, the absence of a definition of "living laws" raises concerns regarding discrimination in their application. Moreover, an effective public administration must cultivate transparency, accountability, and citizen engagement. Concerns have been expressed regarding restrictions on the right to free speech. Critics contend that human rights violations are incompatible with an effective criminal justice system, despite the government's assertion that the provisions are necessary to limit disinformation and safeguard democracy.

In addition, the study offers suggestions for bridging the divide between criticism and effective policy implementations. Included in the recommendations was the evaluation of existing legal frameworks for timely reforms to accommodate the changing societal requirements. Second, the legislature must concentrate on human

rights violations to prevent negative outcomes and incorporate aspects of the restorative justice system. To achieve efficient public administration, policies must emphasize collaboration with local communities and minorities and include their participation to prevent discriminatory results. The Indonesian criminal justice system must be transparent and accountable for effective administration. The Indonesian government must therefore address the potential obstacles and guarantee that the criminal justice system operates following human rights and promotes efficient public administration.

Research Implications

Regarding their practical implications, the findings and discussions presented in this paper offer policymakers in Indonesia valuable insights. The paper begins with a critical analysis of the criminal justice system in Indonesia, delivering new insights into the recently enacted Criminal code. Effective public administration necessitates continuous reforms and adjustments consistent with the legal framework and incorporating national identity and societal values. Policymakers can use the findings to inform policy development and ensure that the criminal justice system promotes effective public administration, human rights protection, and population diversity.

According to the study's findings, with the recognition of living law and the diverse cultural context in Indonesia, it has become essential to educate law enforcement officials and the general public about local customs and traditions. The government must prioritize reducing conflicts and clashes between law enforcement officers and local community members "Adat" for effective administration. Moreover, the discussion surrounding restorative justice has implications for the government and policymakers. The provisions support reducing the burden on prisons and implementing policies that permit individuals to be reintegrated into society and rehabilitated. Policymakers and practitioners can consider these points when designing and implementing rehabilitation and reintegration programs, emphasizing addressing the root causes of criminal behavior. This will result in a more humane and efficient administration to combat crime and advance justice.

Regarding the study's theoretical implications, the findings have yielded substantial knowledge about the criminal justice system and Indonesia's newly revised criminal code. To the best of the researcher's knowledge, limited research evaluates the new Criminal Code; therefore, the study added value by providing current information on the subject. The paper offers scholars and legal theorists the opportunity and space to debate further and investigate the new Criminal code within the context of public and legal administration. The study increases understanding of the criminal justice system and the significance of incorporating human rights into the criminal justice system.

Limitations

It is essential to recognize the study's limitations, despite having yielded valuable conclusions. The present study relied exclusively on secondary sources and was centered on the Indonesian criminal justice system. The Indonesian legal system is distinct and one-of-a-kind, with cultural, political, and historical influences. Therefore, the findings and discussion of the study are limited to Indonesia. To expand

the scope of the analysis, it is suggested that future researchers execute a comparative legal analysis involving additional countries and evaluate whether structural, cultural, or social factors influence legal differences. Scholars can investigate how other multicultural societies' criminal justice systems have been reformed.

As this study utilized legislation, documents, and articles to conduct a secondary analysis, future research may include primary data acquisition, such as conducting interviews with legal authorities, to supplement secondary data. This will lend further depth to the findings of the study. In addition, the study evaluated the criminal justice system from a broader perspective, with the Criminal code as its focal point. The researcher did not consider any specific offense or crime in the context of criminal justice; therefore, future researchers can limit the topic by analyzing specific criminal acts to provide valuable information about the criminal justice system in Indonesia.

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