

Rethinking Overcriminalization in Indonesia: Proportionality, Ultimum Remedium, and the Limits of Criminal Law

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Abstract

Introduction: The expansion of criminal sanctions into administrative violations and private conduct raises concerns about the proper limits of criminal law in Indonesia. The central issue is how to distinguish legitimate criminalization from overcriminalization while protecting public interests and individual rights.

Purposes of the Research: This study examines the forms of overcriminalization in Indonesian criminal law, evaluates their compatibility with proportionality and the ultimum remedium principle, and identifies normative directions for criminalization reform.

Methods of the Research: This study employs normative legal research using statutory and conceptual approaches. Primary legal materials, including relevant criminal provisions, are examined alongside secondary legal scholarship. Qualitative legal analysis is used to assess the legitimacy, necessity, and proportionality of criminal sanctions.

Findings of the Research: The analysis identifies three areas requiring critical scrutiny: criminal sanctions attached to administrative violations, criminal provisions affecting civil liberties, and criminalization of conduct within the private sphere. The article also discusses prison overcrowding and criminal justice system burdens as potential consequences of excessive penal intervention. However, the causal contribution of overcriminalization requires further assessment against other structural factors. A proportionate criminalization policy should consider the seriousness of harm, the necessity of penal intervention, the availability of less restrictive alternatives, and the relationship between the offense and the severity of sanctions. **Conclusion:** Criminalization reform in Indonesia should adopt a structured normative assessment grounded in legality, proportionality, necessity, and ultimum remedium. This framework can help legislators distinguish conduct requiring penal intervention from conduct more appropriately addressed through administrative, civil, or restorative mechanisms.

Keywords: Overcriminalization; Criminalization Policy; Proportionality; Ultimum Remedium; Administrative Penal Law.

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INTRODUCTION

Criminal law is essentially a legal instrument used by the state to protect the legal interests of the community through regulation of prohibited acts and the threat of sanctions for violators. However, the use of criminal law cannot be carried out indefinitely. Criminal law in the development of the modern legal system is seen as the ultimate remedium that is only used when other legal instruments, such as administrative law or civil law, are unable to provide adequate legal protection. This principle is important to prevent the excessive use of criminal law and maintain a balance between the interests of law enforcement and the protection of citizens' rights.

The development of laws and regulations in practice in Indonesia shows a tendency to use criminal sanctions to regulate various areas of people's lives. Not only acts that actually cause large losses or threaten public order, various administrative violations and relatively minor violations also begin to qualify as criminal acts. This phenomenon is known as overcriminalization, which is a situation when too many acts are criminalized or when criminal law is used excessively to solve various social problems.

Overcriminalization raises a debate in the study of criminal law because it has the potential to shift the function of criminal law from the last resort to the main means (*primum remedium*) in social control. In fact, not all violations must be responded to through criminal mechanisms. The use of criminal law that is too broad can cause a loss of proportionality in the formation of criminal law policies and ignore the existence of other legal instruments that are actually more effective and efficient. As the principle of proportionality is one of the important principles in the criminal law system which aims to ensure that the punishment imposed on the perpetrator of a crime is balanced with the seriousness of the crime committed¹. In addition to raising theoretical problems, overcriminalization also has practical consequences for the criminal justice system. The more acts that are categorized as criminal acts, the greater the number of cases that enter the criminal justice system. As a result, law enforcement officials face an increased workload starting from the investigation stage, prosecution, to examination in court. This condition has the potential to cause backlog cases, slow down the case resolution process, and hinder the realization of fast, simple, and low-cost judicial principles.

Another impact that is no less important is the increase in the number of correctional inmates. The criminalization of various offenses, including administrative offenses and relatively minor offenses, contributes to the increase in the number of inmates. As also conveyed by Mohammad Yofarrel, the increase in the number of prison inmates is largely due to the criminalization policy of minor offenses and administrative offenses.² As a result, many correctional institutions in Indonesia experience overcrowding. This condition not only complicates the implementation of coaching and rehabilitation functions, but also raises various humanitarian, health, and efficient problems of correctional management. The problem of overcriminalization shows the importance of evaluating the criminalization policy implemented in laws and regulations. Every act that will be criminalized must meet certain criteria, such as the existence of a significant level of danger to the community, the need for urgent protection of legal interests, and the inability of other legal instruments to solve existing problems. Thus, the use of criminal law remains within the corridor of the principle of *ultimum remedium* and does not develop into an instrument that is used excessively.

Studies on overcriminalization need to pay attention not only to the definition and limits of the use of criminal law, but also to the various forms of its emergence in the regulation of people's lives and their impact on the criminal justice system. These problems in the context of Indonesian criminal law can be examined through the criminalization of administrative offenses, the use of criminal provisions related to civil liberties, and the regulation of behavior in the private sphere. These various forms have different characteristics and legal

¹ Deni Setiawan et al., "Prinsip Proporsionalitas Dalam Penerapan Hukuman Pidana Di Indonesia," *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin* Vol. 1, no. 3 (2024): 266.

² Mohammad Yofarrel, "Kriminalisasi Berlebihan (Overcriminalization) Sebagai Faktor Struktural Overcrowding Lapas Dalam Sistem Peradilan Pidana," *UNES Law Review* 8, no. 1 (September 2025): 151-62, <https://doi.org/10.31933/unesrev.v8i1.2504>.

issues, but they both raise questions about the limits of the use of criminal law in regulating people's lives. This research focuses on the elaboration of forms of overcriminalization in Indonesian criminal law and the analysis of their impact on the criminal justice system, especially related to the overcapacity of correctional institutions and the burden of handling cases from the investigation stage to the court examination. Based on this description, the study of overcriminalization is important to be conducted in order to understand its forms, causes, and impact on the criminal justice system in Indonesia.

LITERATURE REVIEW

Criminal law is basically an instrument used by the state to protect the legal interests of the community through the determination of prohibited acts and the provision of sanctions against violators. However, the use of criminal law cannot be carried out without limits. As by John Kenedi,³ states that in the making of laws and regulations in their formulation must be clear and detailed, especially in the formulation of sanctions so as not to cause doubts in their application and the law can be effective so that it can create justice and legal certainty for the parties to the case. So that if criminalization is carried out excessively, a phenomenon known as *overcriminalization* or overcriminalization will appear.

Overcriminalization itself was first discussed by Sanford H, in an article entitled '*The Crisis of Overcriminalization*' written in 1968. *Overcriminalization* by Kadish is interpreted as the use of criminal law to realize public policy goals that are completely unworthy/justified in prohibiting. Morally neutral acts are not worthy of criminalization, such as consensual sexual relations. For Indonesia, the Kadish thought cannot always be followed since Pancasila was agreed upon by the founder of the nation as a legal ideal (*rechtsidee*) and a view of the nation's life so that the values contained in it must be a guideline/foothold/source of value in criminalizing an act.

Then, by Barda Nawawi Arief defines *overcriminalization* as the number or abundance of crimes and deeds that are criminalized.⁴ *Overcriminalization* arises when the process of criminalization takes place continuously without being based on a tested assessment and without an evaluation of its effect on the entire system. Meanwhile, in the view of Ellen S. Podgor⁵ Interpreting overcriminalization, as the number of acts that are criminalized without a justification basis and the use of a criminal provision in the law through the discretion of the public prosecutor. Through the concept presented by Ellen S. Podgor, it is illustrated that this overcriminalization comes from the granting of considerable discretionary authority by the law to the public prosecutor to determine which acts are in accordance with the formulation of delicacy. However, this concept is still general because it has not yet described the forms of acts that give rise to overcriminalization. In addition, the concept mixes between overcriminalization which is the impact of the criminalization process without evaluation and irrational with excessive law enforcement in the form of giving authority to the public prosecutor to determine which acts are in accordance with the delicacy formulation. However, through these definitions, overcriminalization can be understood as a state when too many acts are made into criminal acts or when criminal law

³ John Kenedi, *Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2017), 8.

⁴ Mahrus Ali, "Overcriminalization Dalam Perundang-Undangan Di Indonesia," *JH Ius Quia Iustum* 25, no. 3 (2019): 454, <https://doi.org/10.20885/iustum.vol25.iss3.art2>.

⁵ Ali, "Overcriminalization Dalam Perundang-Undangan Di Indonesia."

is used excessively to regulate various aspects of people's lives. This phenomenon has led to the expansion of the scope of criminal law to include acts that actually do not necessarily require a response in the form of criminal sanctions.

Then, in the view of Kip Schlegel, David Eitle, and Steven Gunkel, it is considered that the problem of *overcriminalization* is actually related to two things, namely:⁶ 1) First, the concept of overcriminalization reflects a broader concern about the role of criminal sanctions and the perception used about criminal behavior. The question that arises in connection with the first is what kind of behavior is considered a crime. The question of the extent to which criminal sanctions are applied is no more important than the question of what conditions must be met in order for criminal sanctions to be applied. Overcriminalization, thus, represents the imposition of a criminal label on behavior that does not actually meet the criteria for that label; 2) Second, the concept of overcriminalization also pays attention to the frequency with which criminal sanctions are applied to an act immediately declared as a prohibited act. The question related to this is how often criminal sanctions are threatened and how severe criminal sanctions are imposed on the person who commits a crime. Overcriminalization represents the imposition of criminal sanctions more frequently than other available social control responses that are more appropriate and the imposition of criminal sanctions that are not in accordance with their objectives.

Erik Luna argues that overcriminalization is not only related to the number of prohibited acts, but also includes the following issues; what should be denominated as a crime and when it should be enforced; and what should be appropriate criminal limits and criminal sanctions in specific cases.⁷ Overcriminalization, thus, is an abuse of the highest power of the criminal justice system, namely the implementation of a crime or the imposition of criminal sanctions without a justification basis. In general, forms of overcriminalization include;⁸ a) the granting of uncontrolled discretionary authority to law enforcement; b) criminal disparity against several perpetrators who commit the same crime; and c) abuse of power by law enforcement. Meanwhile, Andrew Ashworth said that overcriminalization occurs when criminal law works beyond its three main functions, namely declarative function, preventive function and regulatory function, in relation to declarative function, overcriminalization arises when a crime is imposed without any mistake or a minor criminal act is categorized as a serious crime. Overcriminalization in the context of preventive functions arises when prohibited acts are harmless or the possibility of harm arising from the prohibition of an act is still remote, in relation to the regulatory function, overcriminalization arises when the criminalized act is an administrative or civil offense, or civil/administrative sanctions are more effectively empowered. Thus, overcriminalization in this study is understood as the expansion of criminalization of acts that are not based on adequate consideration of the feasibility of using criminal law, including when its use is disproportionate or when other legal instruments have the potential to provide a more appropriate settlement.

⁶ Gusti Randhy Mukhtar, "Perlindungan Hukum Terhadap Korban Tindak Pidana Body Shaming di Media Sosial" (Universitas Islam Indonesia, 2023), 14.

⁷ Ali, "Overcriminalization Dalam Perundang-Undangan Di Indonesia."

⁸ Adi Syahputra Sirait, "Overcriminalization Dalam Peraturan Pemerintah Nomor 9 Tahun 1975," *Jurnal Al-Maqasid* 6, no. 2 (2020): 172.

METHODS OF THE RESEARCH

This study employs normative legal research using statutory and conceptual approaches. The primary legal materials comprise selected statutory provisions that impose criminal sanctions on administrative violations, conduct affecting civil liberties, and private conduct. These provisions are selected based on their relevance to the scope and limits of criminalization in Indonesia. Secondary materials include scholarly publications on overcriminalization, proportionality, criminal law policy, and the *ultimum remedium* principle. The materials are analyzed through a structured normative assessment examining legality and clarity, the legitimacy of the protected interest, the seriousness of harm, the necessity of penal intervention, the proportionality of sanctions, and the implications for fundamental rights. Each selected provision is assessed against these criteria, and the findings are compared to identify recurring normative deficiencies and possible reform options. Data on prison overcrowding and criminal justice workloads are used as contextual indicators rather than conclusive evidence of a causal relationship with overcriminalization.

RESULTS AND DISCUSSION

A. Forms of Overcriminalization in Indonesian Criminal Law

The phenomenon of overcriminalization in the Indonesian criminal law system can be seen from the increasing use of criminal law to regulate various aspects of people's lives. One of the most prominent forms is the criminalization of administrative violations. Basically, the criminalization policy is to determine an act that is not originally a criminal offense to a criminal act in a law and regulations. According to Soerjono Soekanto, criminalization is an act or determination of the ruler of certain acts that are considered despicable and punishable by the community, then determined as criminal acts. Thus, criminalization is a normative process that leads to the formation of laws that prohibit an act and threaten it with criminal sanctions. However, not all acts that are considered reprehensible deserve to be made criminal acts. As conveyed by Soedarto, who then emphasized that in criminalizing several things, several things must be considered, including:⁹ a) The use of criminal law must pay attention to the goals of national development, namely realizing a just and prosperous society that is evenly distributed in spiritual material based on Pancasila; in connection with this, the (use) of criminal law aims to overcome crime and hold a hearing on the countermeasures themselves, for the welfare and protection of the community; b) Acts that are sought to be prevented or overcome by criminal law must be undesirable acts, namely acts that cause losses (material and/or spiritual) to community members; c) The use of criminal law must also take into account the cost and benefit principle; d) The use of criminal law must also pay attention to the capacity or ability of the working power of law enforcement agencies, that is, there should be no excess of workload (overbelasting).

The issue of criminalization in the context of administrative law becomes relevant because many administrative regulations are accompanied by criminal threats. W. F. Prins even stated that almost every modern administrative law regulation ends with a criminal provision (in cauda venenum).¹⁰ It is said that the policy of using criminal sanctions in laws

⁹ aditya Wahyu Wiratama, "Kebijakan Kriminalisasi Pelanggaran Administratif Dalam Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan" (2018).

¹⁰ I Nyoman Artayasa, "Kedudukan Hukum Administrasi Negara Dalam Ilmu Hukum I," *Jurnal Cakrawarti* 02, No. 01 (2019): 35.

that administrative law aims to strengthen and enforce administrative law norms. Administrative law is basically a law that regulates or regulatory rules, which is a law made in exercising regulatory powers, so administrative criminal law is often also called criminal law (regarding) regulation or criminal law of rules (*ordenaringsstrafrecht*). When violations of administrative obligations are threatened with criminal penalties, what is called administrative penal law or administrative penal law is born.

Sudarto defines administrative offences as offences that are violations of the government's efforts to bring public welfare or order, namely what are called "regulatory offences" or "*ordnungsdelikte*".¹¹ Regarding the issue of criminal acts or criminal acts, it is known that there is a term *mala in se*, which is an act that is wrong and immoral in oneself and *mala prohibita*, which is things that are prohibited by law as a violation of the rights of others just because these things are prohibited or violate regulations made by the government to protect the public interest. In connection with the terms *mala in se* and *mala prohibita*, it can be said that administrative criminal law falls within the scope of *mala prohibita*. One of the characteristics of regulatory offences is the non-fulfillment of established administrative obligations that have been set by the government or violations of the rules set by the government.

However, the use of criminal sanctions in administrative law should not make criminal law the first instrument (*primum remedium*). Criminal law should be placed as the last resort (*ultimum remedium*) if administrative sanctions are ineffective. According to Muladi, the complementary nature between criminal law and administrative law in the form of administrative penal law often occurs, which can be seen from the criminalization of acts that actually fall within the administrative jurisdiction. This can be seen in the practice of imposing articles on corruption crimes against acts that can fall into the realm of administrative law. This problem is often initiated by the concept of abuse of authority. As in the writings of Atqo Darmawan Aji,¹² that related to the element of 'abuse of authority' mentioned in the provisions of Law Number 31 of 1999 is "any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position or means that are in him because of his position or position that can be detrimental to the state finances or the state economy". This element is said to be an element against the law of corruption, and as an element that must be fulfilled. Then Atqo added, that this element must be proven first, namely through the State Administrative Court, as in the provisions of Article 21 of Law Number 30 of 2014, which states that: the authority to receive, examine and decide whether or not there is an element of abuse of authority committed by a Government Official is the State Administrative Court. In this regard, the provisions in the Law on Corruption must first go through the State Administrative Court in deciding whether an act of an official can be said to be an abuse of office or vice versa. As conveyed by Indriyanto Seno Adji, errors in understanding the concept of unlawful acts can result in the criminalization of state apparatus. As a result, administrative errors or government policies that are not actually intended to enrich themselves can be treated as criminal acts.

¹¹ Wiratama, "Kebijakan Kriminalisasi Pelanggaran Administratif Dalam Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan."

¹² Atqo Darmawan Aji, "Analisis Yuridis Hukum Pidana Dan Hukum Administrasi Dalam Perkara Tindak Pidana Korupsi Perspektif Critical Legal Studies," *Lex Renaissance* 9, no. 1 (2024): 317-324.

However, the existence of criminal threats in administrative regulations cannot necessarily be categorized as overcriminalization. The use of criminal sanctions in administrative law is basically justified when necessary to protect important legal interests, ensure compliance with regulations, and prevent violations that cause significant harm or harm to society. Under certain conditions, administrative sanctions alone may not be sufficient to achieve the goal of such protection. Therefore, an assessment of an administrative criminal provision needs to consider the nature and seriousness of the violation, the legal interests to be protected, the effectiveness of the administrative sanction, and the proportionality of the criminal threat imposed. On the other hand, administrative criminalization has the potential to become overcriminalization if criminal sanctions are used without adequate necessity, especially when the offense that occurs is administrative, does not cause significant harm or harm, and can be effectively dealt with through administrative mechanisms. In such circumstances, the use of criminal law risks creating a disproportionate burden on individuals and the criminal justice system. Thus, the main issue is not solely the existence of criminal sanctions in administrative regulations, but whether the use of these sanctions is really necessary and proportionate to the nature of the violation and the purpose of legal protection to be achieved.

Another form of overcriminalization can be found in the expansion of the use of criminal law to activities related to civil liberties and citizens' rights, such as in the provisions of Article 256 of the new Criminal Code, which reads: Any person who without prior notice to the authorities holds a march, demonstration, or demonstration on a public street or public place that results in the disruption of public interest, causes disturbance, or riots in the community, is sentenced to imprisonment for a maximum of 6 (six) months or a maximum fine of category II. This indicates that violations of administrative requirements related to the expression of opinions in public can be subject to criminal sanctions. In fact, in a democratic country, freedom of expression is a constitutional right guaranteed by law. In addition, overcriminalization can also be seen from the increasing involvement of criminal law into the private sphere of citizens. One of the examples that is widely discussed is the regulation of cohabitation outside of marriage or known in society as "kumpul kebo", in Article 412 of the Criminal Code, which in some views states the criminalization of cohabitation acts as excessive and too intrusive into the private domain of each person. As stated by Sanford H. Kadish, the delinquency of acts that refer to the moral approach is exemplified such as the criminalization of sexual relations that are "deviant", carried out outside the relationship and legally recorded by the state until or considered "abnormal" can create overcriminalization.¹³

B. The Impact of Overcriminalization on the Criminal Justice System

Overcriminalization has various consequences for the criminal justice system. The use of criminal law as the main tool in dealing with various offenses can cause overcrowding in correctional institutions (prisons). The large number of individuals who are imprisoned for minor or administrative offenses causes prisons to be unable to carry out their rehabilitation functions optimally. This condition not only harms inmates, but also burdens the state budget. Data as of November 2024 shows that the number of prison inmates has reached

¹³ M. Rizki Yudha Prawira, "Potensi Overkriminalisasi Pada Pengaturan Tindak Pidana Kohabitasi Dalam Kitab Undang – Undang Hukum Pidana: Perspektif Fair Trial," *Jurnal Huku Statuta* 4, no. 1 (2024): 33.

around 265,346 people, while the ideal capacity is only around 140,424 people.¹⁴ This inequality reflects an overcrowding rate of 89%, which not only interferes with the function of coaching and rehabilitation, but also raises humanitarian and efficiency problems in the governance of the national correctional system. This overcrowding phenomenon does not only occur nationally, but is also seen in various regions. In South Sumatra, the number of prison inmates reaches 15,730 people, even though the maximum capacity is only 6,605 people, indicating an excess capacity of around 138%. Meanwhile, in East Kalimantan, the overcapacity rate reaches 250%, with 12,542 inmates occupying facilities that should only accommodate 3,586 people.

This increase in prison inmates is largely due to policies that criminalize minor offenses and administrative offenses. Many individuals are sentenced to prison for minor offenses, such as traffic offenses or self-use of narcotics, which should be addressed through administrative sanctions or rehabilitation programs. This approach not only burdens the correctional system, but also ignores the principles of fairness and effectiveness in law enforcement. Efforts to address the problem of overcrowding have been made through various approaches, one of which is the construction of new prisons in areas experiencing overcapacity. However, physical development alone is not enough to solve this problem comprehensively. More in-depth policy reforms are needed, including the implementation of alternative sanctions and rehabilitative approaches in the criminal justice system. In addition, the program to transfer inmates from overcrowded prisons to other prisons that still have space is also carried out as a temporary measure.

Prison overcrowding not only has an impact on the physical condition of facilities, but also affects the quality of inmate coaching and rehabilitation. Congested and inappropriate conditions can hinder the rehabilitation process and increase the risk of human rights violations in prisons. Therefore, a comprehensive and sustainable approach is needed, including criminal law policy reform, capacity building and quality of correctional facilities, and strengthening rehabilitation and social reintegration programs for inmates. The overcrowding crisis is further exacerbated by the high number of inmates from groups of minor criminals and narcotics cases, especially users.¹⁵ The profile of inmates in Indonesia shows that most prison inmates are entangled in narcotics crimes and the majority of them are not dealers, but users with small amounts of evidence. Data from the Directorate General of Corrections as of August 2021 noted that of the 151,303 inmates of special crimes, as many as 96% or around 145,413 people were inmates in narcotics cases. About 52% of prison inmates were related to narcotics crimes, and about 80% of them were users. This fact underscores the need for a wiser and more proportionate approach in handling narcotics cases, especially in distinguishing between users and perpetrators of organized crime. This condition reflects a legal approach that emphasizes punishment rather than rehabilitation. The Institute for Criminal Justice Reform (ICJR) highlights that policies that imprison narcotics users actually worsen prison conditions and are ineffective in dealing with the problem of narcotics abuse.¹⁶ Data from the Cipinang Class I Prison shows that inmates in narcotics cases dominate the number of inmates, with 2,596 people out of a total of 3,193

¹⁴ Yofarrel, "Kriminalisasi Berlebihan (Overcriminalization) Sebagai Faktor Struktural Overcrowding Lapas Dalam Sistem Peradilan Pidana."

¹⁵ Regyta Cahyani, Regita Merlandri, and Vinda Milsyi Almeida, "The Effect of Investigation Effectiveness by Investigators on the Speed of Settlement of Cases in Criminal Courts," *Journal of Law and Public Policy Studies* 3, no. 1 (2025): 214-24.

¹⁶ Cahyani, Merlandri, and Almeida.

inmates. This confirms that narcotics cases, especially involving users, are the largest contributor to prison overcrowding. The ICJR also noted that policies that do not provide rehabilitation guarantees to narcotics users have led to an increase in the number of addicts and users in prisons, which has an impact on decreasing the potential health of users and worsening prison conditions.¹⁷

Then, the number of criminal laws or overcriminalized practices not only has an impact on the increase in the number of inmates, but also has direct implications for the workload of law enforcement officials from the investigation stage. The wider the scope of criminalized acts, the more cases enter the criminal justice system. This condition causes investigators to face a surge in the number of reports and cases, which ultimately affects the quality and speed of the investigation process. The effectiveness of investigations is a fundamental element in determining the overall success of the criminal justice system in Indonesia, including in ensuring the smooth trial process in court. This stage not only serves to find suspects and collect evidence, but also serves as the foundation for subsequent stages such as prosecution and examination at trial. If the investigation stage is carried out slowly, inaccurately, or uncoordinated, the impact will be felt directly on the prosecution process and lead to delays in the settlement of cases in court. A process that should uphold the principle of *due process of law* can turn into a protracted process, burdening law enforcement officials, and causing legal uncertainty for the public. In this context, ineffective investigations are not only a problem in the early stages, but have systemic implications for the court's workload and hampered the principle of fast, simple, and low-cost justice.

Empirically, the effectiveness of investigations often depends on the quality of coordination between investigators and other law enforcement agencies, especially the prosecutor's office. In practice, bureaucratic and overlapping procedural obstacles often cause case files to be returned repeatedly (P-19). The process of submitting case files often faces administrative obstacles, such as differences in format or completeness standards between the police and the prosecutor's office. These obstacles not only slow down the prosecution stage, but also cause delays in the transfer of cases to the court. The 2023 Annual Report of the Attorney General of the Republic of Indonesia recorded that more than 45,000 general criminal case files were returned to investigators due to formal and material incompleteness. This condition shows weaknesses at the investigation stage that have a direct impact on delaying the trial process and have the potential to cause a backlog of cases in court. In addition to administrative issues, the human resource factor is also a central issue. The quality of investigators greatly determines the accuracy of the application of the article and the accuracy of the evidence collected. Errors in understanding the elements of a criminal act can lead to the preparation of substantially weak Examination Minutes. This weakness becomes fatal when the case is examined in court, because the judge will assess the strength of the evidence based on the quality of the files and evidence prepared from the investigation stage.

From the perspective of Soerjono Soekanto's theory of legal effectiveness, human factors are included in the elements of the legal structure. A legal structure that does not function optimally, due to a lack of personnel, lack of training, or low integrity, will cause the law to lose its effectiveness. If this structure is weak at the investigation stage, then the court will accept cases with suboptimal evidentiary quality, which ultimately prolongs the

¹⁷ Cahyani, Merlandri, and Almeida.

examination process and increases the workload of judges. The work culture of the apparatus also affects the effectiveness of the investigation. The orientation that emphasizes too much on administrative completeness rather than the search for material truth causes the file to appear neat formally, but substantially weak in front of the court. As a result, the trial becomes longer because the judge has to re-explore facts that should have been clear from the investigation stage. External factors such as limited facilities and infrastructure also affect the effectiveness of the investigation. In a number of areas, the limitations of forensic laboratories, DNA testing kits, and digital analysis devices have resulted in the proving process taking longer. This delay has an impact on the slow transfer of cases to the court and increases the potential for case accumulation. Then, if it is related to the theory of the criminal justice system proposed by Herbert L. Packer,¹⁸ Investigation is the entrance that determines the effectiveness of the entire law enforcement chain. If the investigation is not effective, there will be a domino effect in the form of delays in prosecution, delays in hearings, and increased case load in court. Thus, the weak effectiveness of investigations has a direct correlation to the accumulation of cases and disruption of court performance.

CONCLUSION

Overcriminalization in Indonesian criminal law should be assessed not merely by the number of criminal prohibitions but by whether each prohibition is legally justified, necessary, and proportionate to the harm it seeks to prevent. The examination of administrative violations, civil liberties, and private conduct demonstrates the importance of distinguishing legitimate penal intervention from criminalization that may exceed the protective function of criminal law. However, the classification of a particular provision as overcriminalization requires a provision-specific normative assessment rather than a general presumption that criminal sanctions are inappropriate. This study proposes that criminalization policy be evaluated through six considerations: legality and clarity of the offense, legitimacy of the protected interest, seriousness of harm, necessity of penal intervention, proportionality of sanctions, and implications for fundamental rights and the criminal justice system. The *ultimum remedium* principle should therefore operate as a substantive consideration in legislative evaluation, alongside the availability and effectiveness of administrative, civil, and restorative alternatives. Regarding criminal justice system pressures, prison overcrowding and procedural inefficiencies should be treated as important policy concerns, but their relationship with overcriminalization requires further empirical investigation. Future criminal law reform should combine systematic review of existing criminal provisions, reasoned justification for new criminalization, proportionate sanctions, and periodic evaluation of penal policy. Such an approach can strengthen legal certainty, protect fundamental rights, and preserve criminal law for conduct that warrants penal intervention.

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¹⁸ Cahyani, Merlandri, and Almeida.

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