

EVALUATION OF NON- STRUCTURAL INSTITUTION ESTABLISHMENT POLICY IN INDONESIA: CASES ON NATIONAL POLICE COMMISSION AND PROSECUTOR'S COMMISSION

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ABSTRACT

The study examines non-structural government institutions/state auxiliary institutions in Indonesia, with a focus on the National Police Commission and the Prosecutor's Commission. The data gathering method is qualitative through documentation and focuses group discussion (FGD). The purposes of this research are to examine the characteristics and performance measurements of the Police Commission and the Prosecutor's Commission in achieving their objectives and to examine the policy performance evaluation of non-structural government institutions. Furthermore, the purpose of this research is to uncover critical characteristics that influence the performance of the Police Commission and the Prosecutor's Commission in attaining their respective goals. The aim of the two commissions' formation, as well as the independence of their institutions, are some of the measures used to evaluate their performance. According to the findings of this study, the Police Commission and the Prosecutor's Commission are not yet entirely autonomous in carrying out their responsibilities as independent organizations. Furthermore, the National Police Commission's and Prosecutor's Commission's objectives have not been met following the policy objectives that led to their foundation. The content of the policies created by the government, as well as the policy environment as an external feature, are essential aspects that impact the success of the Police Commission and the Prosecutor's Commission in achieving their aims.

Key words: State Auxiliary Institution; Policy Evaluation; National Police Commission; Prosecutor's Commission

EVALUASI KEBIJAKAN PEMBENTUKAN LEMBAGA NON-STRUKTURAL DI INDONESIA: KASUS KOMISI KEPOLISIAN NASIONAL DAN KOMISI KEJAKSAAN

ABSTRAK

Penelitian mengangkat evaluasi kelembagaan lembaga pemerintah non struktural di Indonesia dengan fokus kepada Komisi Kepolisian Nasional dan Komisi Kejaksaan. Adapun metode yang digunakan adalah dengan kualitatif dengan Teknik pengumpulan data secara dokumentasi dan focus group discussion. Penelitian ini bertujuan untuk melihat karakteristik dan pengukuran kinerja Komisi Kepolisian dan Komisi Kejaksaan dalam mencapai tujuannya, dan evaluasi kinerja kebijakan yang dihasilkan oleh Komisi Kepolisian Nasional dan Komisi Kejaksaan. Selain itu, penelitian ini bertujuan mengidentifikasi faktor penting yang menentukan keberhasilan komisi Kepolisian dan Komisi Kejaksaan dalam mencapai tujuan pembentukannya. Beberapa ukuran yang digunakan dalam mengevaluasi kinerja kedua komisi tersebut adalah dengan melihat tujuan pembentukannya, dan melihat independensi kelembagaannya. Adapun hasil penelitian ini menunjukkan bahwa Komisi Kepolisian dan Komisi Kejaksaan belum sepenuhnya independent dalam melaksanakan tugasnya sebagai lembaga mandiri. Selain itu, pencapaian tujuan Komisi Kepolisian Nasional dan Komisi kejaksaan belum sesuai dengan tujuan kebijakan pembentukannya. Adapun faktor penting yang menentukan keberhasilan komisi Kepolisian dan Komisi Kejaksaan dalam mencapai tujuannya adalah dapat dilihat dari isi kebijakan yang disusun oleh pemerintah dan lingkungan kebijakan sebagai aspek eksternal.

Kata kunci: Lembaga Pemerintah Non-Struktural; Evaluasi Kebijakan; Komisi Kepolisian Nasional; Komisi Kejaksaan.

INTRODUCTION

Indonesia's constitution has been amended four times. The revisions have mostly resulted in changes to the government system, not least the construction of various state institutions as an antithesis to the authoritarian system of the new order under President Soeharto's leadership. In the Indonesian state administration system, one of the institutional phenomena is the emergence of various autonomous state institutions (state auxiliary agencies). Some experts consider this independent institution to be the third tier organ after the President, People's Consultative Council, Regional Representatives Council, People's Consultative Assembly, Supreme Court, Supreme Audit Agency, and TNI, State Police, Judicial Commission, Commission General Election, and Bank Indonesia (Basarah, 2014).

These institutions are founded on various legal bases, ranging from the constitution and statutes to presidential decrees. The variance in the legal basis for the development of these organizations indicates that the formation of these institutions is based on incidental issues and spontaneous responses to existing difficulties. (Ditjen Perpu, 2018). This resulted in the commissions operating independently and not complementing one another, potentially resulting in the effectiveness of the commissions' existence in the state administrative structure still not appearing to be running in accordance with the noble goal of establishing an extra-legislative institution. the extra-judicial and the extra-executive (Alder, 1989; Ditjen Perpu, 2018).

Since the Reformation period, there has been the establishment of non-structural government entities. Currently, there are 98 non-structural institutions whose formation is governed by legislation (Ditjen

Perpu, 2018). Every government institution must be founded on the demands of tasks that cannot be performed by ministries/non-ministerial government entities. All executive government activities are essentially organized into ministries, as specified by Article 17 paragraph (1) of the 1945 Constitution, which specifies that "the President is aided by ministers." Furthermore, it is specified in Article 17 paragraph (3) that "every minister is in charge of some issues in the government." According to the above-mentioned clauses of the constitution, it is the ministers who help the president.

The presence of independent institutions in the form of non-structural institutions is prompted by distrust of ministries/LPNKs, which are perceived to be prejudiced and influenced by political interests in performing specific responsibilities (Basarah, 2014; Iswandi & Prasetyoningsih, 2020). The initial thought behind establishing a non-structural institution was to provide independent oversight of both the government and the business sector/community. In addition to oversight, non-structural entities, such as the General Election Commission or the Election Supervisory Body, are there to carry out some functions that, when carried out by the government, tend to be neutral and not objective.

The existence of non-structural institutions along the way has no obvious function or foundation for consideration (Iswandi & Prasetyoningsih, 2020). Worse, there is a propensity to establish non-structural institutions in order to create new jobs without a compelling case for separating a task or function from a ministry into a new non-structural entity (Nurtjahjo, 2017). There are many experts who emphasize the existence of autonomous institutions, as well as those who disagree. The opposing group claimed that the establishment of state commissions was often viewed as a supplement to victims of specific branches of power (Ditjen Perpu, 2018; Djafar, 2009), and that it was nothing more than a sort of sloth in democracy and power sharing (Djafar, 2009). Every new government entity, even non-structural entities, has budgetary implications for the government. If there is no compelling reason and tangible benefit from the presence of a non-structural institution, the policy of constructing a non-structural institution will merely increase and waste state funds (Arliman, 2016). Meanwhile, the group that agreed believed that this independent state institution could fill a void in implementing a more professional government by providing advocacy and consideration for government policies (Nurtjahjo, 2017), technical service provision (Alder, 1989), and the establishment of informal judicial machinery for resolving disputes (Alder, 1989; Gaus, 1942).

The phenomenon of the development of independent institutions has occurred in a number of countries around the world. This is due to the fact that practically all modern governments strive to achieve prosperity for all of their citizens through the concept of a welfare state. To attain this purpose, the

state must ensure that all existing state institutions carry out their functions accurately, quickly, and fully. The transition to democracy, which resulted in a variety of economic issues, was caused by a variety of social and economic upheavals. Many countries have been obliged to experiment with institutional structures as a result of social and economic shifts (James et al., 2016).

The complications of social problems that arose in England as a result of changes in the socio-political configuration in the form of the Industrial Revolution in the 18th and 19th centuries could not be resolved by relying on pre-existing institutional mechanisms, but were addressed by establishing special bodies that were carried out by parliament. The development of these specialized agencies is regarded as the best solution since they are best suited to handle and resolve the intricacies of state administrative concerns in a well-institutionalized manner (Ditjen Perpu, 2018). The formation of similar extra institutions, as well as the expanding role of parliament in the state structure, occurred in the United States as a result of the accelerating dynamics of an increasingly complex society presenting different challenges than before, necessitating new answers that must be found immediately. As a result, the United States parliament has established bodies that are accountable to it in various special matters relating to the legislative function, such as the Federal Communications Commission, Civil Aeronautics Board, Securities and Exchange Commission, National Labor Relations Board, Federal Power Commission, Interstate Commerce Commission, and the Federal Trade Commission. There are no less than 30 groups like this throughout the United States that are relatively independent specialized institutions tasked with carrying out semi-judicial and semi-legislative responsibilities (Asshiddiqie, 2012). Based on the study literature above, policy performance evaluation of non-structural Institution establishment is rarely conducted by both scholars or government/practitioners. Most of the previous study focus on organizational performance which based on development planning document.

The purpose of this research is to assess and analyze the characteristics of the National Police Commission and the Prosecutor's Commission, to analyze the achievement of the objectives of establishing or measuring the policy performance of the establishment of the Police Commission and the Prosecutor's Commission, and to analyze the factors that determine the success of achieving the objectives of the establishment of the Police Commission and the Prosecutor's Commission.

METHOD

This study is an institutional evaluation study (Lester & Stewart, 2000), that focuses on the achievement of policy objectives and the factors that influence policy objective achievement (Rossi et al., 2004). Evaluation study is the part of policy analysis

which aims to see the policy purpose is achieved or not (Dunn, 1994; Priatna, 2020). While the policy analysis is used to establish recommendation (Landy, 1993).

The Prosecutor's Commission and the National Police Commission are the two non-structural government institutions studied in this study. Setting indicators in accordance with policy objectives is used to measure goal achievement. This policy evaluates two aspects: 1) the institution's independence and 2) the process of achieving the objectives (Dunn, 1994). For the independence evaluation, this research uses several indicators namely the mechanisms of appointment, non-affiliation, length of office, and binding decisions demonstrate institutional independence. Meanwhile, goal achievement evaluation of National Police Commission and Prosecutor's Commission are measured by several criterion, namely:

Table 1. Measuring Institution Purpose Achieving Process

Objectives	Institution	Prosecutors Commission	Police Commission
Policy Formulation Objectives		Number of policy recommendations generated in the last year	Number of policy recommendations generated in the last year
		The number of policy recommendations set by the President becomes policy	The number of policy recommendations set by the President becomes policy
Purpose of Appointment and Dismissal of the Chief of Police	-		The number of dismissals of the National Police Chief based on the recommendation of the National Police Commission
			The number of appointments of the National Police Chief based on the recommendation of the National Police Commission
Purpose of Enforcement of Discipline and Code of Ethics	Number of cases examined	Number of cases examined	
	Number of recommendations of the Prosecutor's Commission implemented by the Attorney General/President	The number of recommendations of the Indonesian National Police Commission implemented by the Indonesian National Police	

Source: managed by author and adapted from (Dunn, 1994)

Documentation studies and focus group talks were employed to obtain data (FGD). In FGD, informants are determined with criterion-based selection technique. There are several informants who attend the FGD, namely National Police

Commission's Commissioners, Prosecutor's Commission's Commissioners, Institution Deputy of Ministry of State Apparatus and Bureaucracy Reform, and Experts of each Commission. Meanwhile, the data analysis technique is carried out by comparing the evaluation criteria for both independence and attainment of policy objectives. The gathered data and facts were evaluated and compared to preset criteria (Creswell, 2009; Maxwell, 2012). To identify the influence of success factors of the Police Commission and the Prosecutor's Commission in their respective missions, this research uses qualitative method which identify factors from the data collection and data analysis technique.

By assessing and contrasting the data and facts with the criteria, it is possible to determine if the National Police Commission and the Prosecutor's Commission fit the criteria as independent institutions and whether the purposes of establishing the two institutions were met.

RESULTS AND DISCUSSION

Independence Evaluation

The criteria that have been mentioned are used to evaluate independence. The following is a discussion of each criterion:

a. Appointment Mechanism

The National Police Commission, often known as **Kompolnas**, was established under the authority of Law Number 2 of 2002 governing the Indonesian National Police. Following the requirements of Articles 37 and 39 of the Act, Presidential Regulation Number 17 of 2005 was published, which was later replaced by Presidential Regulation Number 17 of 2011. The Police Commission consists of nine members, three of whom represent the government and six of whom represent the community and specialists. These members can be seen in the following table:

Table 2. National Police Commission Members

Type of Position	Amount	
	Active Police/ retired Police	Non-Active Police/Non- Retired Police
Commissioners	2	7
Top Manager	6	8
Functional Staff		1

Source: National Police Commission Members, 2021

Two of the six **Kompolnas** members, who are drawn from the community and specialists, are retired **Polri**. Members of the National Police Commission who are government employees are appointed *ex officio* by the Ministers of Home Affairs, **Menkumham**, and **Menkopolkukam**. Meanwhile, members who are not government officials are chosen by a selection panel constituted by the President. The minister has *ex officio* three **Kompolnas** members. Meanwhile, the other six members are chosen by the President's Selection

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Team. As a result, the three Kompolnas members nominated by the appointed government were not independent and were not chosen objectively by an independent selection panel. Based on these criteria, the procedure for appointing Kompolnas members does not meet all of the requirements for an independent entity.

The appointment of the members of the Prosecutor's Commission is almost the same as the appointment of the National Police Commissioner, where 3 representatives of the government are not selected independently by the selection team using objective criteria, instead they are proposed by the coordinating minister for Politics, Law and Security. Thus, it can be said that not all members of the Prosecutor's Commission are appointed according to the criteria for the appointment mechanism for independent institutions. Looking at the appointment mechanism carried out at the two institutions above, it appears that the appointment of officials to the police commission and the prosecutor's commission is carried out semi-formally or a mixture of the selection committee system with direct appointments by the government. This model is not found in the practice of appointing commission members which are generally carried out with the staggered model (Mochtar & Satriawan, 2008), involving the president and the DPR, and the formation of a special commission to select commission members of state institutions (Commission of Appointments) ("Association Commission Appointments," 1963).

b. Non-Affiliation

There are three government representatives and two retired police officers among the nine members of the National Police. Because their responsibilities include providing impartial policy recommendations and supervising personnel of the National Police, it should be noted that five of the nine Kompolnas members have conflicts of interest with the Police organizations they monitor. The status of ministers who are members of Kompolnas will also be bound to the direction of the President, who is his superior, so that his independence in making policy recommendations to the President may be compromised. As a result, not all Kompolnas members are non-affiliated, and hence not all Kompolnas members meet the criteria for independent/independent institutions. The Prosecutor's Office provided three of the nine members of the Prosecutor's Commission. As a result, it is possible that certain members of the Prosecutor's Commission have conflicts of interest or are associated with the Attorney General's Office. As a result, not all Prosecutor's Commission members fit the criteria for an independent/independent entity.

c. Job Duration

The National Police Commissioner, who is appointed by the Minister, automatically follows the Cabinet term of office, and as a result, he can be

ousted from his post as a minister at any moment by the President. Thus, there are three members of the National Police Commission who do not have a fixed term of office and can be fired at any moment by the President, interfering with the independence of the Prosecutor's Commission in carrying out its duties and authorities. As a result, not all Kompolnas members fit the criteria for independent/independent institutions. All members of the Prosecutor's Commission serve four-year terms and cannot be fired unless they meet the legal requirements. As a result, members of the Prosecutor's Commission meet the criteria for an independent entity.

d. Binding Decision

All goods produced by the National Police Commission are merely recommendations that the recipient of the recommendation may or may not implement. As the recommendation's recipient, the National Police Chief or Presiden may make a decision that differs from the Police Commission's proposal. As a result, the Police Commission's judgment is not binding, and it does not meet the criteria for an independent/independent organization. The Prosecutor's Commission is only entitled to offer recommendations based on the outcomes of supervision of prosecutors' and prosecutors' staff' actions. The Attorney General followed up on this recommendation. If the Attorney General does not follow up on the Prosecutor's Commission's supervisory results, the Prosecutor's Commission may report them to the President. As a result, the Prosecutor's Commission's decision is not binding, and it does not meet the criteria for an independent entity.

Objectives Achieving Process

a. National Police Commission (Kompolnas)

The National Police Commission has three goals: to formulate policies linked to the National Police in an objective and independent manner, to nominate and dismiss the Chief of Police in an objective manner, and to enforce discipline and the code of ethics for members of the Police.

Table 3. National Police Commission Recommendation

Type of Recommendation	Amount	
	Recommendation Product	Followed Up Recommendation
Budget Policy Recommendation	2	2
Apparatus Recommendation (Professionalism)	8	8
Other Recommendation	4	1

Source: National Police Commission Members, 2021

Kompolnas has presented 14 recommendations in the form of oral and written recommendations for the goal of developing objective and impartial National Police policies, 12 of which have been implemented. The recommendation, however, is not

in the form of a draft policy, but simply a letter expressing opinions or suggestions on a specific subject. The plan does not include the organization of the management system in the Indonesian National Police, which is mandated by law. Kompolnas has not generated a single draft policy, hence the purpose of generating policies in order to implement independent police management has not been met. Kompolnas always gives recommendations for each Chief of Police appointment in order to objectively appoint and dismiss the Chief of Police. However, Kompolnas lacks a formal mechanism in the form of Kompolnas regulations governing the system for selecting candidates for the National Police Chief. As a result, Kompolnas' proposal was unable to guarantee the attainment of the goal of selecting and appointing an objective National Police Chief. Meanwhile, in order to achieve the goals of imposing discipline and a code of ethics for police officers, the Police Commission has never performed an assessment of officers who have been reported to them by the public. Only public reports are forwarded to the Police by the Police Commission. Kompolnas's next step is to clarify the Police's follow-up on the public's complaints. Kompolnas was unable to clarify the correctness of the National Police's follow-up actions. As a result, the goal of establishing the National Police Commission to enforce the National Police's discipline and code of ethics was also not met.

b. Prosecutor's Commission

The Prosecutor's Commission has two goals: to develop objective and impartial policies for the Prosecutor's Office of the Republic of Indonesia, and to enforce discipline and a code of ethics for prosecutors and prosecutors' workers. Concerning the first aim, members of the Prosecutor's Commission have made two policy suggestions to the President in the form of letters regarding the execution of the Prosecutor's Office during the current term. The President has taken no action on either of the two proposals. However, the Prosecutor's Commission has not issued any policy recommendations as described in the draft legislation. Based on the outcomes of the Prosecutor's Commission in giving policy suggestions, it can be concluded that the purpose of establishing the Prosecutor's Commission in formulating policies linked to the Prosecutor's Office of the Republic of Indonesia in draft legislation has not been met. Meanwhile, to meet the second goal, from 2017 to 2019, the Prosecutor's Commission evaluated only one case out of hundreds of complaint cases received by the Prosecutor's Commission. In carrying out supervision of the discipline and code of ethics of prosecutors/prosecutors' employees, the Prosecutor's Commission entered into a cooperation agreement with the Attorney General, who handed over the examination process of the Prosecutors/prosecutors' employees to the Attorney General. The goal of the policy of forming the

Prosecutor's Commission cannot be reached with this agreement because it has been executed by the Attorney General's Office.

Factors that influence the success of the Police Commission and the Prosecutor's Commission in their respective missions

a. Content of Policy

The contents of the policies regulated in Law Number 2 of 2002 concerning the Police and translated into Presidential Regulation Number 17 of 2011 concerning the National Police Commission, as well as Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, which was followed by Presidential Regulation Number 18 of 2011 concerning the Prosecutor's Commission of the Republic of Indonesia, did not authorize the two commissions to achieve the oblique. The policy's contents are intended to be insufficient (policy insufficiency) for policy implementers (implementors) to meet the goals of the National Police Commission and the Indonesian Prosecutor's Commission.

b. Policy Context

Other factors contributing to the failure to meet the policy objectives for the establishment of the Police Commission and the Prosecutor's Commission include: first, resistance from the Police and the Prosecutor's Office to being monitored and regulated by institutions outside their organization; second, a conflict of interest among members of the National Police and the Prosecutor's Commission in carrying out their duties; and third, a conflict of interest among members of the National Police and the Prosecutor's Commission in carrying (Masfufah, 2013). There are emotions of doubt and confusion in supervising the Police and the Attorney General's Office, in addition to conflicts of interest.

CONCLUSION

Both the Police Commission and the Prosecutor's Commission failed to meet the criteria for being independent institutions, as judged by four criteria: selection manipulation, non-affiliation, duration of office, and binding rulings. As an independent institution, the Prosecutor's Commission only meets one of the four criteria. While the other three requirements are not entirely satisfied. Neither the Prosecutor's Commission nor the Police Commission were able to achieve the policy goals for which they were formed. It is recommended that the Police Commission and the Prosecutor's Commission be redesigned to improve the position of institutions that are entirely independent/independent, strong authority, and decisions that bind all parties in order to achieve the policy objectives. Changes to the design of the two institutions can be made by arranging for a Presidential Regulation that governs the two institutions. If the prosecutor's and police commissions have been strengthened by revisions to regulations that govern the two institutions, it is

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required to strengthen supporting resources in the form of secretarial institutions, staff, and suitable finances. The provisions of the policy are designed to be insufficient for policy implementers to accomplish the purposes of the National Police Commission and the Indonesian Prosecutor's Commission. In addition to conflicts of interest, there are feelings of doubt and confusion in supervising the Police and the Attorney General's Office.

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