

The Criminalization of Public Policy and the Governance Dilemma: Reconstructing the Legal Boundaries between Administrative Discretion and Abuse of Authority

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ABSTRACT

The expanding use of criminal law in administrative governance has increasingly reshaped the relationship between public accountability and policy-making in Indonesia. Public officials frequently face criminal investigation for discretionary decisions made within their official authority, particularly when policy failures, procedural irregularities, or state financial losses arise after policy implementation. Consequently, the boundary between legitimate administrative discretion and criminal abuse of authority has become increasingly unclear, creating legal uncertainty and affecting governance effectiveness. This study examines how the criminalization of public policy influences administrative discretion and bureaucratic governance in Indonesia. Using a socio-legal and conceptual legal research approach, the study analyzes legislation, legal doctrines, judicial reasoning, governance theory, and scholarly literature concerning corruption, public administration, and state accountability. The findings reveal that outcome-oriented criminal liability increasingly shifts accountability from intent toward policy consequences. As a result, policy failure and procedural irregularity are frequently treated as indicators of criminal wrongdoing despite the absence of corrupt intent or personal benefit. Excessive criminalization also contributes to defensive bureaucratic behavior characterized by excessive procedural caution, declining policy innovation, delayed decision-making, and weakened administrative responsiveness. This study argues that accountability mechanisms must operate within proportionate legal boundaries. Accordingly, the article proposes a differentiated accountability framework in which criminal sanctions remain focused on intentional abuse of authority, while good-faith administrative errors and policy failures are addressed primarily through administrative supervision and governance correction mechanisms.

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1. Introduction

Anti-corruption enforcement is intended to strengthen public accountability and protect the integrity of state administration. Yet, in many contemporary governance systems, the growing expansion of criminal liability into administrative decision-making has produced an unintended consequence: public officials increasingly fear making policy decisions that carry legal and political risks. Criminal law, which was historically conceived as *ultimum remedium*, is now frequently employed not only to punish corruption but also to evaluate discretionary governmental actions and public policy outcomes. This tendency reflects a broader shift toward the criminalization of governance, where punitive accountability increasingly shapes the relationship between law, bureaucracy, and public administration (Romzek, 2000). Although accountability remains an essential component of democratic governance, excessive penal intervention may simultaneously generate institutional fear, bureaucratic rigidity, and declining policy responsiveness (Haque, 2000).

Within this broader context, Indonesia presents a particularly complex illustration of the tension between public accountability and administrative discretion. In practice, public officials increasingly operate under the persistent risk of criminal investigation for decisions made within their official authority, especially in matters related to public procurement, budget allocation, strategic infrastructure projects, licensing, and emergency policy responses (Kumalaningdyah, 2019). Administrative decisions that were initially intended to address urgent governance needs are often retrospectively examined through criminal law frameworks once policy failures, procedural irregularities, or state financial losses emerge. As a result, the distinction between administrative error, policy misjudgment, and criminal abuse of authority becomes increasingly blurred (Hulu & Pujiyono, 2018).

This condition has generated significant socio-political consequences within the bureaucratic system. Fear of criminal prosecution has gradually encouraged the emergence of what may be described as a defensive bureaucracy, namely a pattern of administrative behavior in which public officials avoid making strategic or innovative decisions in order to minimize personal legal risk (Schäfer et al., 2023). In many institutions, bureaucratic actors tend to prioritize procedural safety over substantive policy effectiveness, resulting in excessive caution, delays in public service delivery, prolonged budget absorption, and stagnation in policy innovation. Such conditions demonstrate that the criminalization of public policy is not merely a legal issue but also a governance problem that directly affects the state's administrative capacity and responsiveness to public needs (Sjamsuddin et al., 2023).

The dilemma becomes more complicated because administrative discretion remains an indispensable component of modern governance. In welfare-oriented states, public administration cannot function solely through rigid statutory commands. Government officials are frequently required to make flexible and responsive decisions in situations where legal norms are incomplete, ambiguous, or unable to anticipate rapidly changing social conditions. Discretion therefore serves as an essential mechanism for ensuring administrative effectiveness and policy adaptability (Shepsle, 2019). In addition, through punitive legal approaches, governance systems may experience a structural imbalance in which fear of liability outweighs the need for responsive public administration.

At the same time, efforts to strengthen anti-corruption enforcement cannot be dismissed as legally unnecessary. Public accountability remains a fundamental principle within constitutional governance and democratic rule of law. Abuse of authority, corruption, collusion, and misuse of public resources continue to pose serious threats to public trust and institutional legitimacy. Nevertheless, problems emerge when criminal liability is imposed without sufficiently distinguishing between intentional misconduct and administrative mistakes committed in good faith. In many cases, the existence of state financial loss becomes the dominant indicator used to justify criminal prosecution, while essential elements such as mens rea, proportionality, procedural compliance, and orientation toward the public interest receive inadequate consideration (Dubber, 2018). Consequently, legal enforcement risks becoming excessively formalistic and potentially undermining substantive legal justice.

This study does not argue for weakening anti-corruption enforcement or reducing public accountability in government administration. On the contrary, accountability remains an essential principle within democratic governance and constitutional rule of law (Ackerman, 2019). However, the use of criminal law must still operate within proportionate and constitutionally justified boundaries. Excessive reliance on punitive approaches may transform accountability into institutional fear, thereby discouraging public officials from exercising legitimate administrative discretion in complex governance situations (Peters, 2021). In such circumstances, criminal law risks functioning not merely as a mechanism of legal control, but also as a source of bureaucratic paralysis and governance insecurity. Accordingly, the central issue addressed in this article is not whether state officials should be held accountable, but how accountability should be structured in a manner that remains legally just, proportionate, and compatible with effective public administration (Kurniawan, 2022). From a constitutional perspective, the expansion of criminal law into administrative governance raises important questions concerning the limits of state accountability and punitive power. Criminal law should not operate as an automatic mechanism for responding to every policy failure, procedural irregularity, or administrative mistake. In democratic legal systems, constitutionalism requires not only accountability in the exercise of public authority but also proportionality, legal certainty, and restraint in the use of coercive state power (Gumbir & Nurhayati, 2016).

Excessive penal intervention risks transforming accountability into institutional fear, encouraging overcriminalization, weakening administrative discretion, and ultimately undermining the effectiveness of public governance (Hartanto et al., 2021). Under such conditions, criminal law may cease to function as a balanced instrument of justice and instead contribute to bureaucratic paralysis and governance insecurity.

Despite growing scholarly attention to the relationship between administrative law and criminal liability, existing studies largely remain doctrinal and legality-oriented. Most discussions focus primarily on statutory interpretation, abuse of authority, or the formal elements of corruption offenses without adequately examining the broader governance implications of criminalizing public policy decisions. Existing literature also tends to insufficiently address how criminalization affects bureaucratic behavior, administrative risk-taking, policy innovation, and the overall effectiveness of governance systems. As a result, there remains a significant theoretical and practical gap in developing a coherent framework capable of distinguishing administrative error, policy failure, maladministration, and criminal abuse of authority within a proportional and justice-oriented governance perspective (Simanjuntak, 2018).

Although previous studies have examined, abuse of authority and corruption from doctrinal and administrative law perspectives, relatively few studies have developed, operational parameters capable of distinguishing legitimate administrative discretion from criminal misconduct within complex governance settings. Existing scholarship also tends to prioritize legality and procedural deviation while giving limited attention to governance risk, institutional behavior, proportional accountability, and the practical consequences of punitive legal intervention on bureaucratic decision-making. As a result, the absence of a comprehensive and context-sensitive accountability framework continues to create legal uncertainty for public officials exercising discretionary authority in good faith.

Unlike previous studies that primarily approach abuse of authority through formal legality and corruption frameworks, this article positions the criminalization of public policy as both a governance-risk problem and a legal-justice problem. The study therefore moves beyond conventional doctrinal analysis by integrating criminal law, administrative discretion, governance theory, and constitutional principles into a proportional accountability framework. Through this interdisciplinary approach, the article seeks to develop a more operational and context-sensitive model for distinguishing administrative error, policy failure, and criminal abuse of authority within democratic governance systems.

Accordingly, this article does not merely discuss the theoretical tension between administrative discretion and criminal liability, but also seeks to formulate juridical and governance-based parameters that may serve as practical guidelines in assessing state accountability. The proposed framework aims to distinguish administrative error, maladministration, policy failure, and intentional abuse of authority more proportionately by integrating criminal law principles, administrative

legality, governance effectiveness, and constitutional limitations on punitive state power.

This study argues that the boundary between lawful administrative discretion and criminal conduct should not be determined solely through procedural deviation or the existence of state financial loss. Instead, the assessment of public policy decisions must incorporate broader juridical and governance-based considerations, including *mens rea*, adherence to procedural standards, proportionality, accountability, and orientation toward the public interest. By integrating principles of criminal law with theories of administrative discretion and governance risk, this article seeks to reconstruct the legal boundaries of state accountability in a manner that preserves both public integrity and effective governance.

Accordingly, this study examines how the criminalization of public policy affects the exercise of administrative discretion and governance effectiveness in Indonesia. It further analyzes the juridical and governance-based parameters necessary to distinguish legitimate administrative discretion from criminal abuse of authority. Ultimately, the article proposes a reconstructed framework of state accountability that is capable of ensuring legal justice without undermining the functional autonomy required for responsive and democratic public administration.

Theoretically, this study contributes to the development of socio-legal scholarship by positioning the criminalization of public policy not merely as a legality problem, but as a governance-risk and legal-justice problem within constitutional governance. Practically, the study offers analytical guidance for law enforcement institutions, judges, and public officials in evaluating discretionary state actions more proportionately and contextually. Through this approach, the article seeks to support the development of a legal system that maintains accountability while simultaneously safeguarding effective governance, democratic administration, and the rule of law.

2. Methods

This study employs a socio-legal and conceptual legal research approach to examine the expanding use of criminal law in evaluating public policy decisions and administrative discretion. The research does not merely analyze legal norms in a formal doctrinal sense, but also investigates how the expansion of criminal liability affects governance practices, bureaucratic behavior, and the exercise of public authority within democratic administration. Through this approach, the study positions the criminalization of public policy not only as a legal issue, but also as a governance and constitutional problem that directly influences administrative effectiveness and state accountability (Wheeler, 2020).

The research applies several complementary approaches, namely the statutory approach, conceptual approach, case approach, and governance approach (Atikah et al., 2024). The statutory approach is used to analyze legal instruments governing corruption, abuse of authority, public administration, and administrative discretion

within the Indonesian legal system. The conceptual approach is employed to examine theoretical concepts such as proportionality, administrative discretion, abuse of power, governance risk, bureaucratic accountability, and overcriminalization. Meanwhile, the case approach is utilized to assess legal reasoning and patterns emerging from judicial decisions and law enforcement practices concerning public officials accused of corruption or abuse of authority in the exercise of governmental functions. In addition, the governance approach is applied to evaluate the broader institutional consequences of punitive legal intervention on public administration, policy responsiveness, and bureaucratic decision-making.

This research relies primarily on secondary legal materials consisting of statutory regulations, court decisions, legal doctrines, academic literature, governance studies, and scholarly publications related to criminal law, administrative law, constitutional law, and public governance. Primary legal materials include legislation concerning corruption eradication, public administration, and abuse of authority, while secondary materials include books, journal articles, and interdisciplinary studies discussing accountability and governance within democratic legal systems.

The analysis is conducted qualitatively using interpretative and analytical methods. Legal norms and governance principles are examined systematically to identify the juridical and institutional boundaries between legitimate administrative discretion, maladministration, policy failure, and criminal abuse of authority. The study further develops a proportional accountability framework intended to reconstruct the legal boundaries of state responsibility without undermining the autonomy necessary for responsive and effective governance. Through this method, the article seeks to formulate a more balanced model of accountability that preserves legal certainty, public integrity, democratic governance, and administrative functionality simultaneously (Malik & Nugroho, 2016).

3. Results and Discussion

3.1. Results

The findings of this study indicate that the criminalization of public policy in Indonesia has gradually shifted the orientation of state accountability from an intent-based approach toward an outcome-based model of liability. In principle, criminal responsibility in corruption law should primarily depend on the existence of intentional misconduct, unlawful abuse of authority, or deliberate misuse of public office. However, the analysis shows that administrative decisions are increasingly evaluated based on their consequences, particularly when state financial losses, policy failures, or procedural irregularities emerge after a policy has been implemented (Kurniawan, 2022).

This development has significantly affected the relationship between criminal law and public administration. Administrative discretion, which originally functioned as an instrument of flexibility and responsiveness within governance, is frequently

reassessed through punitive legal frameworks once unfavorable outcomes occur. Consequently, public officials increasingly perceive discretionary authority as a source of legal vulnerability rather than as a necessary component of effective governance. The findings further reveal that this condition has encouraged defensive bureaucratic behavior, where administrative actors tend to avoid strategic decision-making, delay policy implementation, and prioritize procedural safety over substantive policy effectiveness. Over time, this condition contributes to the formation of institutional risk-avoidance culture within public administration, where bureaucratic compliance is prioritized over adaptive and responsive governance (Schinkel et al., 2020).

The analysis further indicates a recurring tendency within anti-corruption enforcement and judicial assessment to place significant emphasis on policy outcomes and state financial losses rather than on the existence of intentional misconduct or personal benefit (Rubasundram & Rasiah, 2019). This tendency contributes to broader interpretative expansion in determining abuse of authority, particularly in cases involving discretionary governmental decisions implemented under conditions of administrative urgency or policy uncertainty (Hulu & Pujiyono, 2018).

The analysis further indicates a recurring tendency within anti-corruption enforcement and judicial assessment to place significant emphasis on policy outcomes and state financial losses rather than on the existence of intentional misconduct or personal benefit. This tendency contributes to broader interpretative expansion in determining abuse of authority, particularly in cases involving discretionary governmental decisions implemented under conditions of administrative urgency or policy uncertainty. As a result, administrative discretion is increasingly exposed to retrospective criminal evaluation even where the decision-making process remains formally connected to legitimate public objectives and institutional authority (Silitonga, 2022).

More specifically, the study identifies three dominant patterns in the practical application of criminal liability toward public policy decisions. These patterns demonstrate how the boundary between administrative error, maladministration, policy failure, and criminal abuse of authority becomes increasingly unclear when legal assessment relies predominantly on policy outcomes rather than proportional evaluation of intent and governance context (Putra, 2021).

1. Administratively Lawful Decisions Producing State Losses

The first pattern concerns administrative decisions that remain formally lawful and within the scope of official authority but subsequently result in state financial losses due to policy failure, economic miscalculation, or external circumstances. In this category, public officials generally act within their legal competence, comply with institutional procedures, and pursue policies intended to achieve legitimate public objectives. Nevertheless, once adverse consequences emerge, such decisions frequently become subject to criminal scrutiny.

This pattern commonly appears in public procurement, infrastructure development, emergency spending, and strategic economic policies where decisions must be taken under conditions of uncertainty and administrative urgency. Retrospective legal evaluation often focuses primarily on measurable state losses while giving limited consideration to the absence of corrupt intent or personal benefit. As a result, unsuccessful policy outcomes may gradually become associated with criminal wrongdoing even where no evidence demonstrates deliberate abuse of authority (Winarno, 2016).

2. Procedural Violations without Malicious Intent

The second pattern involves administrative decisions that formally deviate from procedural requirements but are carried out without malicious intent or unlawful personal gain. This category often emerges in urgent governance situations where administrative flexibility is considered necessary to respond to immediate institutional or public needs. Although procedural deficiencies may objectively exist, the decisions themselves are frequently motivated by public interest considerations rather than corrupt objectives (Price & Freund, 2017).

The findings indicate that procedural irregularities are often interpreted as sufficient indicators of criminal abuse of authority, particularly when state financial loss subsequently occurs. Consequently, inadequate distinction is made between maladministration, administrative negligence, and intentional corruption. In several cases, procedural non-compliance becomes the primary basis for criminalization despite the absence of evidence showing fraudulent intent, personal enrichment, or deliberate misuse of authority.

This condition reflects the continuing dominance of formalistic legal reasoning within anti-corruption enforcement. Procedural imperfection is frequently treated as a direct indicator of criminal conduct without sufficiently considering proportionality, policy urgency, institutional constraints, or the good faith of decision-makers.

3. Intentional Abuse of Authority for Personal or Political Interests

The third pattern concerns decisions that genuinely involve intentional abuse of authority and therefore properly fall within the scope of criminal liability. Unlike the previous categories, this pattern involves deliberate misuse of public power for personal enrichment, political interests, collusive arrangements, or other unlawful advantages (Mohamed, 2021).

The findings demonstrate that intentional abuse of authority generally contains identifiable characteristics, including personal benefit, deliberate procedural manipulation, concealment of information, conflict of interest, and conscious misuse of official authority contrary to public objectives. In such circumstances, administrative discretion no longer functions as a legitimate governance instrument but instead becomes a mechanism for unlawful conduct (Audia, 2025).

This pattern confirms that anti-corruption enforcement remains essential within democratic governance and constitutional accountability. Criminal sanctions remain necessary where state authority is intentionally exploited for improper purposes. Nevertheless, the findings also demonstrate that not all flawed administrative decisions should automatically be categorized within this form of liability (Jawa et al., 2024).

Overall, the study finds that the practical application of criminal law toward public policy decisions still lacks clear proportional boundaries between administrative accountability and criminal responsibility. The tendency to emphasize policy outcomes, procedural irregularities, and state financial losses without adequately examining intent, governance context, and public interest orientation has contributed to legal uncertainty within public administration. As a result, the distinction between legitimate administrative discretion and criminal abuse of authority remains insufficiently defined in contemporary governance practice.

3.2. Discussion

The findings demonstrate that the criminalization of public policy in Indonesia cannot be understood solely as a legal problem concerning the interpretation of corruption offenses or abuse of authority. More fundamentally, it reflects a broader transformation in the relationship between criminal law, governance, and bureaucratic decision-making. The expansion of criminal liability into administrative governance has gradually shifted the function of criminal law from an instrument intended to address intentional corruption into a mechanism increasingly used to evaluate policy outcomes and administrative performance. Under such conditions, the boundary between public accountability and punitive intervention becomes increasingly unstable (Situmeang et al., 2025).

In principle, anti-corruption enforcement remains an essential component of democratic governance and constitutional accountability. Public authority must remain subject to legal control in order to prevent corruption, collusion, abuse of power, and misuse of state resources (Suramin, 2021). However, the findings of this study indicate that the current expansion of criminal liability has also produced unintended institutional consequences. Administrative decisions that involve policy risk, economic uncertainty, or procedural imperfection are frequently exposed to retrospective criminal evaluation even where evidence of malicious intent remains weak or absent. As a result, criminal law no longer functions exclusively as a response to intentional wrongdoing, but increasingly operates as a mechanism for judging unsuccessful governance outcomes (Danil, 2020).

At the same time, the findings do not suggest that stronger legal oversight is inherently detrimental to governance. In several respects, the expansion of criminal accountability has also encouraged greater procedural awareness, increased financial supervision, and stronger institutional sensitivity toward the misuse of public resources. The problem therefore does not lie in accountability itself, but in the

absence of proportional limits distinguishing intentional corruption from good-faith administrative decision-making. Without such distinction, anti-corruption enforcement risks producing excessive institutional caution rather than accountable and effective governance (Melander, 2017).

This condition illustrates a broader tendency toward overcriminalization within public administration. Criminal law, which traditionally functions as *ultimum remedium*, gradually becomes integrated into ordinary administrative control. Consequently, administrative discretion is no longer viewed primarily as a legitimate governance instrument necessary for responsive public administration, but instead as a potential source of personal legal exposure. The expansion of punitive intervention into policy-making processes therefore creates structural tension between the need for accountability and the need for administrative flexibility within modern governance systems (Putri et al., 2025).

The institutional impact of this condition is particularly significant. The findings reveal that the criminalization of public policy contributes directly to the emergence of defensive bureaucracy within state institutions (Artinger et al., 2019). Public officials increasingly adopt risk-avoidance behavior because administrative decisions are perceived as legally unpredictable. In practice, many bureaucratic actors become more concerned with avoiding future criminal allegations than with achieving substantive policy effectiveness. As a consequence, policy innovation, strategic decision-making, and rapid administrative response are frequently replaced by excessive procedural caution (Artinger et al., 2025).

This bureaucratic defensiveness affects governance capacity in several ways. First, public officials tend to delay decision-making processes in order to minimize legal exposure. Second, institutions become increasingly reluctant to implement innovative or high-risk policies even where such policies are necessary to address urgent public needs (Ansell & Torfing, 2022). Third, administrative actors often prioritize formal compliance over substantive public outcomes because procedural safety is viewed as more important than governance effectiveness. In the long term, this condition weakens institutional responsiveness and reduces the state's capacity to address complex social and economic challenges. Under such conditions, excessive criminalization may also weaken state capacity by limiting the ability of public institutions to formulate adaptive, timely, and responsive policies in addressing complex social and economic problems (Andrews et al., 2017)

From a socio-political perspective, these findings demonstrate that criminalization does not always strengthen accountability in a substantive sense. Instead, excessive punitive intervention may encourage bureaucratic paralysis and institutional fear. Accountability mechanisms that become excessively oriented toward legal sanction may discourage adaptive policy decision-making and reduce institutional responsiveness (Yan & Ramesh, 2026). Under conditions of heightened legal risk, public officials frequently adopt defensive decision-making strategies that

prioritize personal protection and procedural safety over substantive organizational effectiveness (E. M. Busuioc & Lodge, 2016). Consequently, governance systems dominated by criminal risk often discourage the exercise of administrative discretion, causing bureaucratic behavior to become increasingly oriented toward self-protection rather than public problem-solving and responsive governance (Pierre & Peters, 2020).

This condition is especially problematic within welfare-oriented and democratic governance systems where administrative discretion plays an essential role in responding to rapidly changing social conditions. Modern governance cannot operate exclusively through rigid statutory commands because many policy situations require flexibility, speed, and institutional judgment. Administrative discretion therefore constitutes a functional necessity rather than merely a legal privilege. However, when every procedural deviation or unsuccessful policy outcome becomes vulnerable to criminal interpretation, the practical space for legitimate discretion becomes increasingly restricted (Gultom et al., 2021).

The findings also indicate that excessive reliance on outcome-based liability potentially weakens anti-corruption enforcement itself. When criminal law is expanded too broadly into ordinary administrative governance, the distinction between genuine corruption and administrative error becomes blurred. Such conditions may undermine legal certainty and reduce the normative legitimacy of anti-corruption law (Rose-Ackerman & Palifka, 2016). When anti-corruption enforcement is perceived as encompassing ordinary administrative errors rather than intentional corruption, confidence in the fairness and proportionality of accountability institutions may also decline. As a result, anti-corruption mechanisms risk being viewed not only as instruments of accountability but also as sources of legal uncertainty within public administration (M. Busuioc, 2021). Criminal sanctions are most effective when directed toward intentional abuse of authority, personal enrichment, collusion, and deliberate misuse of public power. By contrast, the overextension of criminal liability toward good-faith administrative decisions risks transforming anti-corruption enforcement into a mechanism of generalized bureaucratic control rather than targeted legal accountability (Manao, 2018).

Moreover, the overexpansion of criminal liability into ordinary administrative governance may gradually affect the institutional legitimacy of anti-corruption enforcement itself. When criminal law is applied too broadly to policy failure and procedural imperfection, public accountability mechanisms risk being perceived as instruments of punitive control rather than mechanisms for protecting public integrity. In the long term, such conditions may reduce institutional trust in legal enforcement processes and create uncertainty regarding the proper limits of state accountability within democratic governance (Hadjon, et.al, 2011).

This study therefore argues that the state must maintain a proportional balance between legal oversight and discretionary governance space. Accountability remains indispensable within democratic government, yet accountability mechanisms must

also recognize the institutional realities of public administration. Not every policy failure, procedural irregularity, or state financial loss should automatically be interpreted as evidence of criminal conduct. A proportional accountability framework requires broader evaluation of intent, governance context, procedural circumstances, public interest orientation, and the existence of personal benefit (Nalle, 2018).

Within this framework, criminal law should remain directed primarily toward intentional abuse of authority rather than administrative imperfection alone. Administrative law mechanisms, supervisory institutions, ethical accountability, and internal governance controls should function as the primary instruments for addressing maladministration, procedural negligence, and policy error that occur without corrupt intent. Criminal intervention should be reserved for situations involving deliberate misuse of public authority for unlawful purposes (Johnsen, 2019).

In this regard, reconstructing the boundary between administrative discretion and criminal abuse of authority requires a differentiated accountability model. Administrative errors committed in good faith should primarily be addressed through administrative correction and institutional supervision. Procedural negligence without corrupt intent should be evaluated through proportional administrative or ethical mechanisms, while criminal sanctions should remain limited to situations involving intentional abuse of authority, personal enrichment, collusion, or deliberate misuse of public office. Such differentiation is necessary to prevent the expansion of criminal law into ordinary governance activity while preserving accountability within democratic administration (Herizal et al., 2020).

Accordingly, reconstructing the legal boundary between administrative discretion and criminal abuse of authority requires not only doctrinal clarification but also institutional reorientation. Governance systems must be capable of protecting public accountability without simultaneously producing excessive bureaucratic fear. The balance between legal control and administrative flexibility is therefore essential for preserving both democratic accountability and effective governance. Without such balance, criminal law risks undermining the very administrative capacity that modern states require in order to respond effectively to public needs and complex governance challenges.

4. Conclusion and Recommendations

This study demonstrates that the criminalization of public policy in Indonesia reflects the expanding use of criminal law within administrative governance. The findings show that the boundary between legitimate administrative discretion and criminal abuse of authority has become increasingly blurred due to the dominance of outcome-oriented liability, where policy failure, procedural irregularity, or state financial loss is frequently associated with criminal wrongdoing regardless of the presence of malicious intent. As a result, public officials increasingly perceive

discretionary authority as a source of legal risk rather than as an essential instrument of responsive governance.

The study further finds that the expansion of punitive legal intervention produces significant institutional consequences. Excessive criminalization contributes to the emergence of defensive bureaucracy in which administrative actors prioritize procedural safety over policy effectiveness, avoid strategic decision-making, and become reluctant to exercise discretion in complex governance situations. Consequently, while anti-corruption enforcement remains essential for democratic accountability and the prevention of abuse of power, disproportionate criminal intervention may simultaneously weaken policy innovation, administrative responsiveness, and governance capacity.

Accordingly, this study emphasizes the need for a differentiated accountability framework capable of distinguishing administrative error, procedural negligence, maladministration, and intentional abuse of authority more proportionately. Administrative mistakes committed in good faith should primarily be addressed through administrative supervision and governance correction mechanisms, whereas criminal sanctions should remain limited to situations involving deliberate abuse of authority, personal enrichment, collusion, or fraudulent misuse of public office.

Practically, law enforcement institutions should apply stricter proportional standards in assessing public policy decisions by considering intent, governance context, public interest orientation, and the existence of personal benefit rather than relying solely on procedural deviation or state financial loss. Regulators and oversight institutions should also formulate clearer legal guidelines concerning the limits of administrative discretion and strengthen preventive governance mechanisms to reduce legal uncertainty within public administration.

Ultimately, democratic governance requires a legal system capable of maintaining accountability without undermining the institutional capacity to govern effectively. Criminal law should function as a safeguard against intentional abuse of power, not as a source of excessive bureaucratic fear that discourages responsible decision-making. Therefore, reconstructing the legal boundary between administrative discretion and criminal abuse of authority is essential not only for legal certainty and anti-corruption enforcement, but also for preserving responsive governance, institutional trust, and democratic public administration.

5. Declarations

5.1 Ethical considerations

Not applicable

5.2 Use of artificial intelligence (AI)

The authors declare that the generative artificial intelligence (AI) tool was used exclusively for language editing and grammatical refinement. The use of AI did not influence the scientific content, research

design, analysis, interpretation of findings, or conclusions presented in this manuscript. Full responsibility for the integrity and accuracy of the work remains with the authors.

5.3 Conflict of Interest

The authors declare no conflicts of interest

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This research did not receive any financial support.

5.5 Data Availability Statement

No empirical data were generated or analyzed in this study. The findings are based on normative legal analysis of existing legal frameworks and academic literature.

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