

CHAPTER 2.

INTRODUCTION TO THE ROCCIPI PROBLEM-SOLVING METHODOLOGY

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2. Chapter objectives

By the end of this chapter, students will understand the following approaches to policymaking: (1) ends-means, (2) incrementalism, (3) pluralism, (4) criminalization, (5) copying law, and (5) the ROCCIPI problem-solving methodology.

Students will also be familiar with the terms (1) rule, (2) opportunity, (3) capacity, (4) communication, (5) interest, (6) process, and (7) ideology, as they relate to the ROCCIPI problem-solving agenda.

NOTE: In the Indonesian version, put these terms in the correct order to match the “PKKPKKI” acronym. (See note later in chapter.)

Students will be able to use reason informed by experience to analyze and explain social problems, based on the ROCCIPI problem-solving methodology.

Teaching Notes

Recommended Instructional Outline:

Lesson 2 consists of an interactive lecture session lasting about 2 hours, with one in-class assignment. There is no homework assignment in this lesson.

The lecture is as follows:

1. Review of Lesson 1 (15 minutes). Review Lesson 1 objectives. Review Lesson 1 homework. Resolve any outstanding questions the students may have from Lesson 1.

2. Preview of Lesson 2 (15 minutes). Preview Lesson 2, using the chapter outline above.

3. Lecture (1 hour and 15 minutes). The main lecture portion will address the following:

(a) Different policymaking methodologies and the strengths and weaknesses of each approach.

(b) The rationale behind the ROCCIPI problem-solving methodology.

(c) The difference between objective and subjective factors used in the ROCCIPI problem-solving methodology.

(d) Introduction to the seven factors used in the ROCCIPI problem-solving methodology.

4. In-Class Assignment (30 minutes). The in-class assignment will deal with the problem of traffic jams that was first introduced in Lesson 1.

Figure 2.1. [Insert description of figure or picture here.]

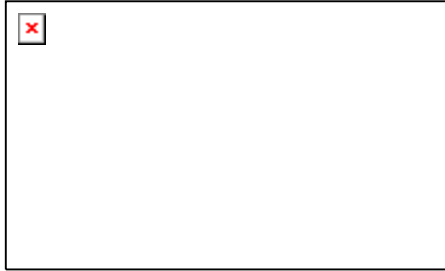


Figure 2.2. [Insert description of figure or picture here.]

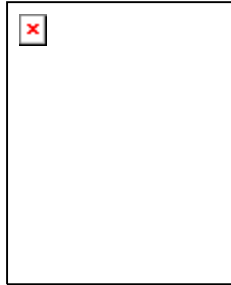
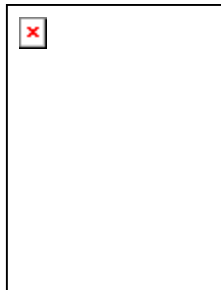


Figure 2.3. [Insert description of figure or picture here.]



3. Introduction

The previous chapter showed how to identify social problems, how to distinguish between causes and conditions, and how to determine

who — whether role occupant (or stakeholder) or implementing agency — is responsible for *what* problematic behavior.

This chapter will focus on the country-specific restraints and resources, or external factors, that influence people’s behavior, in order to provide a means for identifying and organizing the *causes* of problematic social behavior. (It may be helpful to refer back to Figure 1.1, “Why people behave as they do in the face of a law”, on page __, which illustrates how lawmaking institutions, role occupants or stakeholders, and implementing agencies interact to explain why people act as they do in the face of the law.)

Eventually, we will create a causal hypothesis that will guide you through the rest of the problem-solving process. The tool we will use in order to identify and organize this hypothesis is called the ROCCIPI problem-solving methodology or agenda. Before we discuss the ROCCIPI problem-solving agenda, we will look at the alternatives and explain why they fall short of providing effective policy.

4. Alternative approaches when deciding policy

Often when a drafter receives an assignment, there is little in the way of legislative drafting theory to guide the drafter’s work. As we discussed in Chapter 1, few theories or methodologies have been produced to guide the drafter. As a result, drafters resort to the methods that have been used in the past, even when those methods have not proven effective.

There are several approaches that are often used by policymakers in determining what course to take and what solution to propose to a particular social problem. The methodologies most often adopted are (1) ends-means, (2) incrementalism, (3) pluralism, (4) criminalization, and (5) copying law. Each of these will be discussed in more detail below.

(a) Ends-means

An “ends-means” methodology of policymaking is one in which the policymaker decides on a policy based on a stated goal or objective. Often, such goals or objectives are based on inadequate or no research into the *causes* of the underlying social problem. This approach may take the form of instructions to the drafter simply to put the policy’s goal into an acceptable legal form. This approach, which fails to address the causes of the social problem, is very unlikely to result in an effective solution.

(b) Incrementalism

Another approach often favored by legal drafters and policymakers is “incrementalism”. Incrementalism is a process of making laws or policy that seeks to make only small, incremental changes to problematic behavior.

The assumption underlying this methodology is that policymakers lack the information to make major transformation and that such transformation might therefore result in tremendous unintended costs. Incrementalism seems attractive because it appears not to risk resources on an expansive bill that may yield unpredictable results. However, incrementalism may nevertheless fail to make the necessary fundamental changes to the institutions that *cause* the social problem.

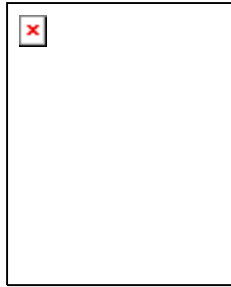
If the problematic behavior is not addressed, even small changes in law will be ineffective. But if major transformatory legislation is based on logical explanations for the problematic social behavior and is well-tailored to address the causes of the behavior, it will avert the problems imagined by incrementalists.

(c) Pluralism (or compromise)

Another approach many legal drafters and policymakers take is to try to balance interests by polling competing groups as to their support for a legislative proposal and changing the proposal based on a balancing of these interests. Pluralism can roughly be described as political bargaining.

Pluralism appears, at first glance, to be democratic. However, the compromises that take effect in the form of pluralism often balance only the interests of those with the means to influence the policymakers (by proper, and sometimes improper, methods). Pluralism may not incorporate the interests of (1) those not represented by a formal organization, or (2) those whose views are not otherwise taken into account by the policymaker. Also, the process is dependent on the legislative proposal presented. If the proposal is too narrow, or deals with inappropriate issues, a process of weighing interests is unlikely to correct the problems.

Figure 2.4. [Insert description of figure or picture here.]



(d) Criminalization and other sanctions

Another approach many legal drafters and policymakers use is criminalization and the imposition of other sanctions. Sanctions (including criminalization) merely prohibit the problematic behavior by making it illegal and by punishing those who engage in the behavior (usually by fines or imprisonment). As with pluralism, criminalization has a certain attraction. A legislative proposal based on criminalization is simple and straightforward. Some would say that it is morally unambiguous: Society decides that a certain behavior is unacceptable and therefore the State is justified in punishing the person who engages in the problematic behavior (the role occupant). Proponents of criminalization and sanctions may ask, “Given this justification, why should the State be concerned about the causes of problematic behavior or about encouraging good behavior?”

Criminalization, however, ignores the factors that may *explain* problematic behavior. This approach can also be costly if criminalization fails to change behavior while nonetheless leading to unnecessarily increased levels of incarceration without resulting in a corresponding effect of deterrence.

Nevertheless, sanctions of varying degrees, when used as conformity-inducing measures, may, after proper analysis, be included as one part of an effective solution.

The Story of the Mule

[NOTE: Insert the story of “The Mule that Couldn’t Pull the Cart and Was Punished” here. Maybe find a good piece of clipart to add to it.]

Teaching Note

There may be situations in which criminalization is the only option (for example, in the case of murder). Discuss with students why this is the case.

(e) Copying law from other jurisdictions

Perhaps the most frequently used method of policymaking is simply copying other law (“foreign law” or the law of another jurisdiction). By copying law, the drafter saves time and may have a ready-made justification for the law simply by pointing to the law’s success elsewhere.

For example, a legal drafter or policymaker deciding on banking policy might be tempted to “borrow” banking law from Switzerland, since the Swiss are known for their banking prowess. The policymaker may think that adopting Swiss banking law in Indonesia will meet with the same success as in Switzerland — and thus raise Indonesia’s system to one of the best banking systems in the world.

In reality, however, while we can all learn from foreign experience, adopting other laws wholesale is seldom as effective as it may first appear. One problem with this approach is that copying other law ignores the fact that countries have different institutions and are faced with different country-specific constraints and resources. Also, because policymakers often fail to realize the importance of understanding why certain foreign laws work in their respective countries, they do not accurately anticipate their effect in the adoptive country.

This is not to say that foreign experience is not valuable when drafting policy. In order to use it effectively, however, policymakers must thoroughly understand the problem in their own countries. If the explanations of foreign problematic behavior and your own country’s problem are sufficiently similar, we can have faith that a successful foreign policy can be successfully adopted in your own country. Often, those parts of a foreign law that correspond to similar behavior can be incorporated.

For example, the illegal sale of cigarettes to minors in both the Netherlands and Indonesia may be partially explained by store owners being unaware of laws prohibiting such sales. Thus, a provision of a Dutch law that provides a campaign to educate store owners about these laws could reasonably be expected to have a similar effect in

Indonesia. However, other parts of the law, dealing with issues in which Dutch and Indonesian behavioral causes differed could not be counted on to be successful.

Teaching Note

Make sure to discuss the importance of understanding institutions and how they may be unique to cultures and therefore require unique policy responses. How does the institution of driving on the right side of the road make American traffic laws difficult to apply in Indonesia? Emphasize that not all institutions are bad or problematic.

5. Problem-solving methodology as a guide to research

The common weakness of each of the methods presented above is that they lack, by varying degrees, a basis in reason informed by experience. The ends-means method ignores the reasons for unwanted behavior and instead begins with a solution based on gut instinct or political expediency. Incrementalism, at best, ignores the complexity and interconnectedness of factors prompting unwanted behavior. By resorting to pluralism, criminalization, and copying law, the policymaker ignores the facts as they are in the “real world” (as opposed to merely “in theory”) and seeks to appease political forces, make a moral statement, or borrow a solution that may superficially appear the same but in actuality may be a solution to an entirely different situation.

An alternative to these approaches is (1) to identify the problem as it exists, as learned in Chapter 1, (2) to analyze and explain the problem and create hypotheses based on the causes of the problem, (3) to propose solutions based on these hypotheses, and (4) to create a system to monitor and evaluate the chosen policy in order to understand which hypotheses were incorrect (and why) and to modify the policy accordingly.

In the end, what this manual proposes is a methodology that seeks to solve or prevent social problems based on reason (looking at the facts as they are in the “real world”) and experience (of those who are connected with the social problem, i.e., the role occupant or stakeholder). In this book, this process will be referred to as the ROCCIPI problem-solving methodology or agenda. (The acronym “ROCCIPI” will be explained below.)

In Chapter 1, we discussed identifying the social problem, the role occupant (or stakeholder), and possible implementing agencies. This chapter will address explanations for the *causes* of problematic social behavior by utilizing each of the ROCCIPI factors to better understand social problems. Once an explanation for problematic behavior is found, a legal drafter or policymaker can provide more appropriate solutions to the problem. To better understand this, we will use the ROCCIPI problem-solving agenda.

Teaching Note

Write the ROCCIPI factors at the front of the classroom (on the blackboard or an easel). Ask the students to come up with three synonyms for each factor. This will help them identify the factors later in their research.

6. The ROCCIPI problem-solving methodology

The ROCCIPI problem-solving methodology is simply a way to explain repetitive problematic behavior in order better to understand the behavior. By better understanding the behavior, we can begin proposing precise policy responses to change this behavior. ROCCIPI is an acronym for the seven categories or factors that provide explanations for problematic behavior. Each factor focuses on one aspect of a behavior and asks questions that will lead to a better understanding of the problem and more meaningful policy responses.

These factors are (1) rules, (2) opportunity, (3) capacity, (4) communication, (5) interest, (6) process, and (7) ideology. In the following chapters, we will discuss these factors in the context of the behavior of the role occupants (or stakeholders) and implementing agencies.

NOTE: In the Indonesian version, put these terms in the correct order to match the “PKKPKKI” acronym. (See note later in chapter.)

The seven factors can be divided into two subcategories — those that are objective and those that are subjective. The following pages will show how the ROCCIPI problem-solving agenda can be used to analyze the behaviors of the role occupant (or stakeholder) and the implementing agency.

Figure 2.5. The elements of the ROCCIPI problem-solving methodology.

R	<u>R</u>ule	(Objective factor)
O	<u>O</u>pportunity	(Objective factor)
C	<u>C</u>apacity	(Objective factor)
C	<u>C</u>ommunication	(Objective factor)
I	<u>I</u>nterest	(Subjective factor)
P	<u>P</u>rocess	(Objective factor)
I	<u>I</u>deology	(Subjective factor)

Figure 2.6. [Indonesian version:] The elements of the PKKPKKI problem-solving methodology.

P	<u>P</u>eraturan	(Objective factor)
K	<u>K</u>esempatan	(Objective factor)
K	<u>K</u>emampuan	(Objective factor)
P	<u>P</u>roces	(Objective factor)
K	<u>K</u>omunikasi	(Objective factor)
K	<u>K</u>epentingan	(Subjective factor)
I	<u>I</u>deologi	(Subjective factor)

Now we will address the differences between subjective and objective factors and discuss each factor in the ROCCIPI problem-solving agenda.

(a) Objective factors

Five of the factors in the ROCCIPI problem-solving agenda are objective factors — that is, factors that may be measured or compared in a standard or quantifiable manner. Examining these factors when trying to explain a behavior can lead to some subtle but surprisingly powerful explanations for behavior. These five factors are (1) rule, (2) opportunity, (3) capacity, (4) communication, and (5) process.

NOTE: List the factors in the order that is appropriate for the language and acronym used.

In English, use “(1) rule, (2) opportunity, (3) capacity, (4) communication, and (5) process” — from “ROCCIPI”.

In Indonesian, use “(1) peraturan [‘rule’], (2) kesempatan [‘opportunity’], (3) kemampuan [‘capacity’], (4) proses [‘process’], and (5) komunikasi [‘communication’]” — from “PKKPKKI”.

(1) Rules

The term “**rules**” most often refers to law, rule, or social norm that affects a role occupant (or stakeholder) and contributes to the problematic social behavior.

Some examples of ways in which the rules contribute to the problem are (1) laws that are vague or ambiguous, (2) laws that permit or require the problematic behavior, (3) laws that do not address the causes of the problematic behavior, (4) laws that do not provide for accountability in their implementation, and (5) laws that grant too much discretion in their implementation or that too greatly restrict discretion.

(2) Opportunity

The term “**opportunity**” refers to the *circumstances, occasion, chance, or probability* that a role occupant (or stakeholder) has to engage in the problematic social behavior or to obey or disobey a law, rule, or social norm.

NOTE: For purposes of translation, the word “chance” used here does not refer to ‘luck’ or ‘fortune’.

Teaching Note

Ask the students to give examples of opportunity to engage in problematic behavior or to obey or disobey a law, rule, or social norm.

One possible example is the opportunity of governmental officials to engage in corrupt behavior (such as accepting or soliciting bribes).

(3) Capacity

The term “**capacity**” refers to the *ability (or inability) or capability* that a role occupant (or stakeholder) has to engage in the problematic social behavior or to obey a law, rule, or social norm. Capacity includes any obstacles that may impede or prevent the role occupant’s (or stakeholder’s) ability to engage in the problematic behavior or the

inability to engage in desired behavior. (The “capacity” factor often overlaps with the “opportunity” factor.)

Teaching Note

Ask the students to give examples in which a person’s inability to take some action explains the person’s failure to comply with the rules.

Some possible examples that address the “capacity” factor are: Inability to obtain credit, lack of expertise, and lack of transportation (for example, a farmer who cannot get produce to market).

(4) Communication

The term “**communication**” refers to the effectiveness with which a law, rule, or social norm is communicated to the role occupants (or stakeholders) affected by the law, rule, or social norm. If people do not know what actions the law permits, requires, or prohibits, how can they possibly be expected to act in conformity with the law?

(5) Process

The term “**process**” refers to *criteria and procedures* (or other pragmatic or logistical aspects) that (1) explain the decisionmaking process that leads a role occupant (or stakeholder) to decide whether to conform or not to conform to a law, rule, or social norm, and (2) encourage or discourage the problematic social behavior by a role occupant (or stakeholder). This factor is particularly important in the case of an institution (such as a governmental agency, a corporation, or other complex organization), in which the decisionmaking process is not vested in a single individual.

Teaching Note

Ask the students to describe how an institution’s complexity, structure, and procedures can affect how the institution decides on its course of action — especially when it comes to obeying or disobeying the rules.

(b) Subjective factors

Subjective factors are those that are not capable of being measured by objective or quantifiable means. Subjective factors also are often the

first factors we think of when explaining the problematic social behavior. The two subjective categories used in the ROCCIPI problem-solving agenda are (1) interest and (2) ideology.

(1) Interest

The term “**interest**” refers to the *incentive or motivation* (both material and non-material) for a role occupant (or stakeholder) to engage in the problematic social behavior. This is the role occupant’s (or stakeholder’s) perception of the personal costs and benefits of complying with the law, rule, or social norm. Many types of personal incentives or motivations may constitute an interest that is sufficient to affect or contribute to the problematic social behavior. This factor also includes “disincentives” that discourage good behavior.

Teaching Note

Ask the students to give examples of both material and non-material incentives that might affect a role occupant’s (or stakeholder’s) behavior. Also ask for examples of “disincentives” that discourage desired behavior.

Some possible material incentives (or benefits): Money or increased employee fringe benefits. Some possible non-material incentives (or benefits): Personal or political power or the esteem of family, friends, associates, and others.

(2) Ideology

The term “**ideology**” refers to the *values and attitudes* that shape how we look at the world and therefore shape our decisions. Ideology also encompasses any subjective motivations that do not constitute “interests”. These are the backgrounds and personal values each person brings to any set of circumstances and affect how the person behaves in the face of those circumstances.

(c) Multiple and overlapping explanations for problematic behavior

Often, more than one factor may interact to affect or contribute to the problematic behavior. For example, a rule affecting a role occupant may require the person to do something that cannot be completed because the person lacks the capacity to do so. In this example, the “rule” factor has combined with the “capacity” factor to explain the problematic behavior.

In another example, the same role occupant may be unaware of the rule because of a failure to communicate the rule adequately to affected persons. In this example, the “rule” factor has combined with the “capacity” factor to explain the problematic behavior.

These examples show the importance of carefully considering each of the ROCCIPI factors fully when seeking an explanation for problematic behavior.

(d) Explanations for problematic behavior dictate potential solutions

It is important to think of the ROCCIPI factors not only as factors that affect or contribute to problematic social behaviors, but also as factors that new policy or law should focus on to *change* the problematic behavior.

For example, if you determine that a person (role occupant or stakeholder) fails to act in a way prescribed by a law because the person simply is not aware of the law — that is, there is inadequate *communication* of the law — a logical solution would be to undertake a policy that *communicates* the law to the affected person (role occupant or stakeholder) to inform the person of the law.

Conversely, a solution that sanctions the role occupant (or stakeholder) for violating the law would be unlikely to have the desired effect, since it does not address the problem, which you have determined (in this example) to be a lack of *communication* of the law. Sanctions do not help role occupants (or stakeholders) find out about the law so that they can obey it. So in this example, sanctions are an illogical solution. The better way is to tailor solutions so that they address the explanations that you have determined by using the ROCCIPI problem-solving method.

By looking at these factors as both factors that contribute to the *problem* and factors to address when formulating a *resolution* to the problem, policymaking will be founded on analysis, logic, and reason based in experience. This type of policymaking is more likely to produce an affective solution than the alternative methods discussed earlier in this chapter.

In-Class Assignment: The Problem of Traffic Jams

Take another look at the letters included in Chapter 1. Identify those letters that advocate an ends-means approach to the problem and

those that leave open the possibility of using the problem-solving approach.

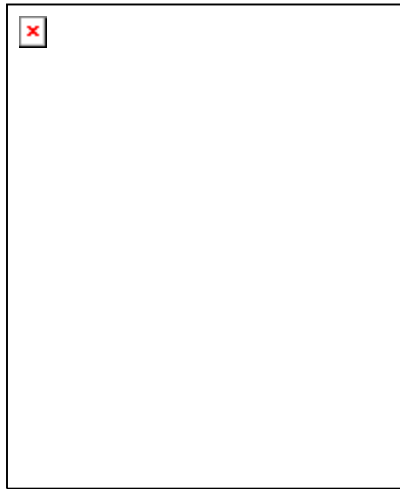
Now imagine that the Mayor asks you to set up hearings with appropriate local interest groups regarding the traffic problem in Makassar. Individually, or in a group, prepare an outline for a memorandum to the Mayor in which you do the following:

1. Identify interest groups that might be invited to provide input on the traffic problem.

2. Educate the Mayor about the disadvantages of resorting to an ends-means approach or to pluralism (or political compromise) when deciding on policy to solve the traffic problem.

3. Propose a problem-solving approach that takes into account the experiences of all the interest groups you have identified. (Also decide who else, other than “interest groups”, you would consult in order to successfully use the ROCCIPI problem-solving agenda.)

Figure 2.7. [Insert description of figure or picture here.]



7. Further Reading

The following materials provide further information about the issues discussed in this chapter and may be referred to for additional information.

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change* (Indonesian version, 2d ed.), ELIPS II National Library, Jakarta, 2002. Pages 85–123.

NOTE: The appropriate pages for the above Seidman reference should be the pages in the Indonesian version that correspond with pages 85–123 in the English version. (This identical reference is used in Chapters 2–4.)

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*, online at <http://www.bu.edu/law/lawdrafting/manual/>, 2003. Chapter 6.

M. Irfan Islamy, *Prinsip-Prinsip Perumusan Kebijaksanaan Negara*, Ed. 2, print 10, Bumi Aksara, Jakarta, 2001. Pages ____.

Ronny Hanitiyo Soemitro, *Studi Hukum dan Masyarakat*, Alumni, Bandung, 1985. Pages 1–54 and 118–165.

Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Sinar Baru, Bandung, [[CLICK HERE TO FINISH THIS CITATION](#)]. Pages 15–29.

Sedarmayanti, *Good Governance* (Kepemerintahan yang Baik) Dalam Rangka Otonomi Daerah, Mandar Maju, Bandung, 2003. Pages 1–29.

Solichin Abdul Wahab, *Analisis Kebijakan, Dari Formulasi ke Implementasi Kebijakan Negara*, Ed.2, Bumi aksara, Jakarta, 2002. Pages 1–15.

NOTE: All these citations should be double-checked for accuracy with respect to (1) the precise author(s), book title, etc., (2) consistency in form among the citations, (3) consistency among the citations that are repeated in other chapters, and (4) actual chapter or page references.

The references to the Seidman resources (English) are correct in this chapter.