



Citizen Compensation for Poor Public Service Delivery: A Civil Rights Perspective

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Abstract: *Enforcement of civil rights in obtaining proper services is a problem that arises in both the public and private sectors. It requires the readiness of service organizers to provide service standards that are stipulated in the Law. One of the problems that today has not been resolved is the provision of compensation to the citizens due to the non-fulfillment of service standards. This research was carried out to answer the question of what impact is caused by the absence of a public service compensation mechanism, and what kind of public service compensation mechanism is appropriate. This research is normative legal research, conducted using a statutory approach and analytical approach. The conclusion is Public Services Law amendment and the enactment of the Presidential Decree concerning public service compensation mechanism is urgent to ensure legal certainty for the citizens in obtaining proper public services.*

Keywords: *public services; civil rights; compensation.*

I. Introduction

Indonesia's constitution mandates that the state is responsible for the provision of health care and adequate public service facilities.¹ Therefore, to comply with these obligations, public service quality improvements are being continually

pursued. Indonesia's public services are periodically evaluated from at least six service policy aspects: HR professionalism, service facilities and infrastructure, public service information systems, consultation and complaints, and service innovation.² There has been a fluctuating national public service evaluation index over the past three years. In

¹ Republic of Indonesia, The 1945 Constitution, Article 34 (3)

² Guidelines of the Minister Administrative

Reform No. 1 of 2022 concerning Instruments and Mechanisms for Monitoring and Evaluating the Performance of Public Service Delivery

2020, the index was 3.84, in 2021 it fell to 3.79,³ and in 2022, it rose again to 3.87, which was categorized as good.⁴ However, at the global level, the 2022 Public Services Index released by the Global Economy ranked Indonesia at 79 out of 177 countries, which was far behind its neighboring countries, such as Singapore, which was ranked 4th after Sweden, Netherlands, and Iceland, which was in first place.⁵ Therefore, it is evident that there are still public service shortcomings in Indonesia.

Public Service Law No. 25 of 2009 mandates that public service providers provide services in accordance with the stated service standards⁶ are the minimum standards required to produce, fast, easy, affordable, and measurable quality services. The service standards include the legal basis, the service terms and the standard operating procedures (SOP); completion terms, fees and rates, service products, facilities and infrastructure provisions, executive competence, internal controls, the handling of complaints, suggestions, and inputs, the number of executive employees, service guarantees; security and safety, and executive performance evaluations.⁷

Although the Public Service Law provisions have been in force for more than 12 years, there are still some public services, especially at the regional level, that are not meeting the required service standards. These poorly developed regional public services have led to the non-fulfillment of the required service standards and have resulted in losses to citizens, all of whom have the right to be given decent services. In this situation, three steps can be taken:

1. The citizens can exercise their rights to choose the public service provider they think is best suited to their needs and meets the required service standards;
2. The citizens can exercise their rights to complain on available complaint channels if aggrieved; and
3. Service providers can provide compensation for the losses arising from the non-fulfillment of the required service standards.

In reference to the first and second steps, Hirschman stated that there were two options for public service participation: exit and voice. Exit can be enacted by a community using a market model that expands public choice, where the concerned citizenry can choose to use the provided public services or move to other service providers.⁸ For example, citizens dissatisfied⁹ with hospital health services can move to other health care providers. This strategy gives

³ "Capaian Strategis Kementerian PANRB Tahun 2022," 2023, <https://www.menpan.go.id/site/berita-terkini/capaian-strategis-kementerian-panrb-tahun-2022>.

⁴ "Pemantauan Evaluasi Pelayanan Publik Tahun 2023 Segera Dimulai," 2023, <https://www.menpan.go.id/site/berita-terkini/pemantauan-evaluasi-pelayanan-publik-tahun-2023-segera-dimulai>.

⁵ "Public Services Index - Country Rankings," accessed March 10, 2023, https://www.theglobaleconomy.com/rankings/public_services_index/.

⁶ Article 15 (f) Public Service Law No. 25 of 2009

⁷ Article 21 Public Services Law No. 25 of 2009

⁸ Albert Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press, 1970), 22–30; Ratminto and Atik Septi Winarsih, *Manajemen Pelayanan* (Yogyakarta: Pustaka Pelajar, 2005), 72–73.

⁹ Citizen (dis) satisfaction with public services is primarily decided by the (dis)confirmation of past expectations. Gregg G. Van Ryzin, "Testing the Expectancy Disconfirmation Model of Citizen Satisfaction with Local Government," *Journal of Public Administration Research and Theory* 16, no. 4 (2006): 599–611, <https://doi.org/10.1093/jopart/mui058>.

communities the power and freedom to choose certain public service types and providers.

The voice concept is related to the right of citizens to exercise their democratic rights by participating through available channels to express their dissatisfaction with service providers and demand adequate public services.¹⁰

While Hirschman confirmed that community participation through exit and voice were viable available avenues, he admitted there were obstacles. The application of the exit concept has been hampered by several factors, such as the coercive power of the state, the absence of alternative public service providers, and the lack of funding for alternative public service providers. The voice concept has also been found to be ineffective because of a lack of knowledge and trust in the existing complaint-handling mechanisms and the accessibility and cost of using those mechanisms.¹¹ Public service complaints in Indonesia are routed through SP4N-LAPOR, the national complaints channel, which at the time of writing had received over 770 thousand complaints.¹² Only 22% of the complaints were resolved within three days¹³, with the remainder taking a long time or never being followed up.

A third alternative is for service providers to provide compensation for the losses arising from the non-fulfillment of service

standards. To fulfill the citizens' rights to receive proper services, the government is obligated to provide compensation when proper services cannot be provided.

Article 15 (f) of the Public Service Law requires service providers to provide public services in accordance with the stated service standards, and if these requirements are not met, there are consequences for service providers.

However, there are some issues with the implementation of these consequences. *First*, the Public Service Law explicitly only regulates the consequences of the non-implementation of service standards for service providers or associated officers; they are issued a written warning sanction, and if the provision is not implemented within three months, they can be removed from office.¹⁴ Therefore, the Public Service Law does not explicitly regulate the compensation disadvantaged citizens can receive when there are unfulfilled service standards as it only states that they can complain using the available complaint channels; the organizer, the Ombudsman, the House of Representatives, the Provincial Representative Council, or the Regency/City Representative¹⁵ Councils; at which time, they can describe the losses suffered and the compensation required.¹⁶

Second, although the Public Service Law regulates the complaint-handling mechanism¹⁷ and requires each service provider to facilitate complaint-handling as part of its service

¹⁰ Ryzin.

¹¹ Ryzin, 74.

¹² <https://www.lapor.go.id/> accessed on March 8th 2023

¹³ Data processing results until March 31th, 2022, [https://menpan.go.id/site/berita-terkini/evaluasi-pelaksanaan-sp4n-lapor-kementerian-panrb-](https://menpan.go.id/site/berita-terkini/evaluasi-pelaksanaan-sp4n-lapor-kementerian-panrb-minta-instansi-susun-rencana-aksi)

[minta-instansi-susun-rencana-aksi](https://menpan.go.id/site/berita-terkini/evaluasi-pelaksanaan-sp4n-lapor-kementerian-panrb-minta-instansi-susun-rencana-aksi)

¹⁴ Article 54 (2) Public Service Law no 25 of 2009

¹⁵ Article 40 Public Service Law no. 25 of 2009

¹⁶ Article 42 (2) and (3) Public Service Law no. 25 of 2009

¹⁷ Article 40 – Article 50 Public Service Law no. 25 of 2009

¹⁸standards, until now, there has been no Presidential Decree established to regulate the compensation mechanism for disadvantaged citizens¹⁹ even though Article 60, paragraph (7), stipulates that “The Presidential Decree must be enacted no later than 6 (six) months from the promulgation of this Law.” Therefore, this provision has been neglected for over 13 years.

This study sought to determine the social impacts resulting from the lack of a public service compensation mechanism in Indonesia and the most appropriate public service compensation mechanism. It is hoped that the results from this study can inform the development of future public service regulation policies, especially compensation mechanisms for poor quality public services.

II. Legal Materials & Method

This research was conducted based on normative legal research, a scientific research method that seeks to determine the truth based on legal scientific normative logic.²⁰ A statutory approach was taken because the focus was on various legal rules, and an analytical approach was applied to elucidate the meanings of normative laws and their application in practice. Specifically, this study analyzed

the policies, laws, and regulations related to public service delivery in Indonesia: the Constitution, which regulates the protection of human rights, especially the rights of the community in obtaining proper services, and Public Service Law No. 25 of 2009 and its associated regulations. To enrich the research and analysis, an analytical approach was also taken to examine the management theories driving public sector organizations.

III. Results & Discussion

As the government belongs to its citizens, public administrators must serve and empower citizens through the proper management of public organizations and the implementation of public policies. Therefore, citizens should be at the forefront and the government’s emphasis should be placed on building public institutions that have integrity and responsiveness.²¹ This means that nominated service providers must be focused on serving their customers and/or citizens, not on appeasing their superiors, that is, service delivery must involve both implementing procedures and rules and ensuring that community rights are being met.

To ensure that citizens receive proper services, service providers must maximize service provision and pay attention to post-service satisfaction²² to assess whether the citizens’ rights have been fully met, which includes the right to

¹⁸ Article 8, Article 21, Article 23 (4), Article 36, and Article 37 Public Service Law no. 25 of 2009

¹⁹ Article 50 (8) Public Service Law no. 25 of 2009

²⁰ Johnny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*, 1st ed. (Malang: Bayu Media Publishing, 2005), 47.

²¹ Robert B. Denhardt and Janet Vinzant Denhardt, “The New Public Service: Serving Rather Than

Steering,” *Public Administration Review* 60, no. 6 (2000): 549.

²² “Satisfaction is high (generally) as long as the quality of the service delivery is maintained.” See: B. D. Engdaw, “The Impact of Quality Public Service on Customer Satisfaction in Bahir Dar City Administration: The Case of Ginbot 20 Sub-City,” *International Journal of Public Administration* 43, no. 7 (2020): 644–54, <https://doi.org/10.1080/01900692.2019.1644520>.

compensation when the service has not met minimum standards.

Therefore, service providers/officers must be responsive to the citizens' public service rights, including compensation for losses, which can be fulfilled in two ways: immediate compensation when losses arise, or complaint mechanisms.

However, as mentioned, Indonesia's complaint-handling mechanisms have usually been found to be ineffective because of a lack of knowledge or trust in the existing complaint mechanisms and the accessibility and cost of using these mechanisms.²³ Although government agencies and service providers already have the SP4NLAPOR! complaint channel, which is connected to 34 Ministries, 100 Agencies, 396 District Governments, 94 City Governments, and 34 Provincial Governments,²⁴ it is ineffective because of a lack of competent and adequate human resources.

Most HR complaint management units in the Ministries, Agencies, and Local Governments are divided into two:

1. Those that utilize existing human resources to manage complaints, in which the coordinators are work unit leaders, OPD, or secretaries, and the

technical roles are assigned to staff knowledgeable in information technology or to civil servants; and,

2. Those that comprise a management team operating under various assignments and decrees, such as the Ministry of Health,²⁵ the Badan Penyelenggara Jaminan Sosial (BPJS Healthcare),²⁶ and the DKI Jakarta Provincial Government.²⁷

Utilizing or assigning existing human resources to deal with complaint management has tended to be a problem. *First*, the complaint management has been unprofessional because it is considered an additional rather than a main task. The career patterns are also unclear, primarily because the complaint-handling position is not included in the Employee Work Target (SKP) documents relied on for performance appraisals. Even when not included as an additional task, some staff has the impression that complaint-handling is a voluntary task because its performance is not considered part of their career advancement and does not attract additional compensation.²⁸ *Second*, when employees move through mutation or promotion, it is not often accompanied by personnel rotations in the complaint management unit. Even when the complaint management officer is mutated or promoted, because they use personal email accounts, their user accounts and/or passwords are not transferred, which means that new staff are

²³ Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*, 74.

²⁴ <https://www.lapor.go.id/> accessed on March 16th 2023

²⁵ Tim penyusun Naskah Akademik, *Koding Hasil Wawancara Kajian Naskah Akademik Jabatan Fungsional (Jafung) Pengelola Pengaduan Pelayanan Publik*, 2018.

²⁶ Regulation of the Minister of Health Number 28 of 2014 concerning Guidelines for the Implementation of the National Health Insurance

Program, Chapter VII Monitoring, Evaluation and Handling of Complaints

²⁷ In 2016 DKI Jakarta received the Best Practice of Community Complaint Service award for the Government category given by the Ministry Administrative Reform. See Erna Martiyanti, "DKI Raih Best Practice Pelayanan Pengaduan Masyarakat," Berita Jakarta, 2016, http://www.beritajakarta.id/read/38197/DKI_Raih_Best_Practise_Pelayanan_Pengaduan_Masyarakat#.WnUha_iXiLIU.

²⁸ Government Regulation number 46 of 2011 concerning Performance Appraisal of Civil Servants

unable to access the SP4N-LAPOR! applications or other applications. Personnel rotations are also not often accompanied by a renewal of the legal Decree of the Regional Head for complaint management officer appointments.²⁹ Although a provision for managing public service complaints management was scheduled in the 2021 Road Map to strengthen the SP4N LAPOR!³⁰ provisions, these urgent needs have not yet been realized.

Therefore, the single resolution to enforce the citizens' rights to receive compensation through the complaint-handling mechanism has proven to be a poor solution, which means alternative resolution avenues are needed to respond to citizen losses from poor service provider performances. If providers are required to have high responsiveness, even if there are no complaints received, providers should take immediate steps to overcome any perceived citizen losses.

After a service failure, perceived justice and satisfaction are influenced by the organization's actions, such as apologizing, resolving the problem, and/or offering compensation. Monetary compensation has been a common instrument to improve perceived justice and satisfaction after service failures. While compensation

schemes exist in private domains, such as hotels and airlines, and semi-public domains, such as railways, city transport, and energy supplies, they are less common in core public organizations. Public organizations also differ in whether they explicitly promise to compensate for service failures.³¹ For this reason, after a service failure, public service providers must seek to ensure justice and satisfaction by employing sensitive and highly responsive officers and implementing compensation schemes.

Competent and highly responsive public service providers

Public service providers are required to implement standards that address organizers, community needs, and environmental conditions. When establishing these service standards, service providers must exercise a non-discrimination principle toward the stakeholders and the public that is directly related to the service type, competence, prioritization, deliberation, diversity, and the service quality that must be met (which can be differentiated from private sector services). The United Kingdom's seven principles of public life were developed by Dexter into ten basic public service principles related to the community to distinguish it from other general services: selflessness, integrity, objectivity, accountability, participation and involvement, openness, honesty, leadership, equality, and competency.³²

²⁹ *Laporan Review Implementasi SP4N, Obudsmen RI*, 2017.

³⁰ Regulation of the Minister Administrative Reform Number 46 of 2020 concerning the Road Map of the National Public Service Complaint Management System for 2020-2024.

³¹ Jean Pierre Thomassen et al., "Compensating Citizens for Poor Service Delivery: Experimental Research in Public and Private Settings," *Public*

Administration 95, no. 4 (2017): 895–911, <https://doi.org/10.1111/padm.12339>.

³² Dexter Whitfield, *Public Service of Corporate Welfare: Rethinking the Nation State in the Global Economy* (London: Pluto Press, 2001); Anwar Sanusi and Septiana Dwiputranti, "Institutional Arrangement and Policy for Improving Competitiveness and Innovation in Local Government Investment," *Jurnal Ilmu Administrasi Dan Organisasi (Bisnis & Birokrasi)* 20, no. 1 (2013): 31.

Law Number 25, 2009, stipulates that the public service should: (1) be fair and non-discriminatory, (2) be careful, (3) be polite and friendly, (4) be assertive, reliable, and timely, (5) be professional, (6) be uncomplicated, (7) comply with the lawful orders of superiors, (8) adhere to the values of accountability and integrity in state institutions, (9) protect confidential information or documents in accordance with legislation, (10) be transparent and able to take appropriate steps to avoid conflicts of interest, (12) respect infrastructure and public service facilities, (13) not provide false or misleading information in response to requests for information and be proactive in meeting the public interest, (14) not misuse information, positions, and/or authority, (15) behave in accordance with decency, and (16) not contradict procedures.³³

Mitchel outlined the competency requirements associated with the *Cultural Competency in Public Administration and Public Service Delivery* as:

- a. removing barriers that can prevent culturally diverse people from accessing services;
- b. developing outreach strategies to ensure participation from culturally diverse people;
- c. ensuring there are culturally appropriate service delivery methods;

- d. regularly consulting culturally diverse communities to identify their needs and develop associated program goals, objectives, and activities;
- e. incorporating cultural diversity into all aspects of service delivery, including assessment, planning, intervention, and evaluation; and,
- f. ensuring the availability of support services.³⁴

Developing cultural competence in public administration and public service delivery to ensure greater sensitivity to community needs and greater responsiveness to losses from the non-fulfillment of service standards requires thinking outside the box and incorporating various nontraditional, non-mainstream sources, approaches, assessment tools, and performance measures.³⁵

Compensation scheme

While there are various compensation schemes in the private and semi-public domains, these are less common in Indonesia's core public organizations. Public organizations also differ in whether they explicitly promise to compensate for service failures.³⁶ However, the new public management (NPM) reforms in Indonesia have required public service organizations to adopt similar good practices as in the private sector. The NPM paradigm requires that public organizations implement laws and regulations and provide maximal service satisfaction to consumers or citizens (*serving rather than steering*).³⁷

³³ Article 34 Law of Public Service No. 25 of 2009

³⁴ Mitchell F. Rice, "Promoting Cultural Competency in Public Administration and Public Service Delivery: Utilizing Self-Assessment Tools and Performance Measures," in *Annual Conference of the National Association of Schools of Public Affairs and Administration* (Minneapolis, 2006), 9.

³⁵ Rice.

³⁶ Thomassen et al., "Compensating Citizens for Poor Service Delivery: Experimental Research in Public and Private Settings."

³⁷ Denhardt and Denhardt, "The New Public Service: Serving Rather Than Steering," 549.

Aircraft public services in Indonesia have exemplary compensation schemes for passengers experiencing losses from flight delays that do not require a complex complaint-handling procedure. Based on the Minister of Transportation Regulation Number 89 of 2015 regarding “Delay Management in Commercial Air Transport Business Entities³⁸,” air transport business entities are responsible for all flight delays resulting from airline management factors and must compensate the passenger for losses from the non-fulfillment of service completion standards related to airline management, including:

- a. pilots, co-pilot, and cabin crew delays;
- b. catering service delays;
- c. handling delays on land;
- d. passenger delays related to late check-in, transfers, or connecting flights; and
- e. aircraft unpreparedness.³⁹

However, aviation business entities are not responsible for delays or losses arising from non-management related factors or *Force Majeure*, such as the weather (heavy rain, flooding, lightning, storms, fog, smoke, visibility below the minimum standard, or wind speeds that exceed the maximum standard that interferes with flight safety), operational technical factors caused by airport conditions at the time of departure or arrival, or other factors such as riots and/or demonstrations in the airport area.⁴⁰

To ensure that compensation is paid, airlines must provide executive officers (managerial level) with the full authority to

make decisions in the field to deal with passengers who experience flight delays.⁴¹ Officers must be highly responsive, empathetic, attentive, and caring and must assist passengers to rearrange their travel plans before they complain.

To more easily determine the compensation types, the compensation schemes are divided into six categories, as follows:

- a. category 1: for 30–60-minute delays, the compensation is a soft drink;
- b. category 2: for 61–120-minute delays, the compensation is drinks and a snack box;
- c. category 3: for 121–180-minute delays, the compensation is drinks and a heavy meal;
- d. category 4: for 181–240-minute delays, the compensation is drinks, a snack box, and a heavy meal;
- e. category 5: for a delay of more than 240 minutes, the compensation is 300,000 rupiahs (three hundred thousand rupiahs);
- f. category 6: if a flight is canceled, the airlines must assign the passengers to the next available flight or refund the entire ticket cost (refund ticket); and
- g. for delays in categories 2–5, passengers can be also transferred to the next available flight or the entire ticket cost refunded (refund ticket).

These categories provide legal certainty for both the service providers who provide the compensation and the citizens who are harmed by these various circumstances. These arrangements also minimize injustices or abuses of authority when providing compensation.

³⁸ Article 6 Regulation of the Minister Transportation Number 89 of 2015

³⁹ Article 5 (2) Regulation of the Minister Transportation Number 89 of 2015

⁴⁰ Article 5 and Article 6 (2) Regulation of the Minister Transportation Number 89 of 2015

⁴¹ Article 8 Regulation of the Minister Transportation Number 89 of 2015

The compensation must be provided without question by officers on behalf of the airlines.⁴² When a flight is delayed and meets one of these six categories, the officer must actively and directly compensate the passenger and must not wait for the passenger to complain. Rather than waiting for customers or citizens to complain, this type of active, responsive, compensation mechanism should apply to all public service providers when citizens suffer losses from the non-fulfillment of service standards.

Scheduled commercial air transport business entities must have Standard Operating Procedures (SOPs) in the Indonesian language⁴³ for delay management to ensure that the community understands the procedures when service standards are not met. All public service providers should also have SOPs in their service standard sections to actively deal with citizen losses from the non-fulfillment of service standards.

Threat of sanctions

To ensure the implementation of the compensation scheme provisions, airline entities can be subject to regulatory sanctions, from warning sanctions to business license revocations.⁴⁴ However, the Public Service Law states that sanctions for the revocation of business licenses cannot be applied to government agencies or state or regionally owned enterprises

(BUMN/BUMD). Rather, sanctions on government service agencies can only be directed toward officials, such as written warning sanctions to remove them from their positions.⁴⁵

The Public Service Law does not include any sanctions on government agencies or state or regionally owned enterprises. The Public Service Law divides public service providers into:

1. providers of public goods/services by government agencies that receive their financial resources from state or regional budgets and revenue (APBN and/or APBD);
2. providers of public goods/services by business entities that received their establishment capital from state wealth and/or separated regional wealth (State/regional owned enterprise); and,
3. public service providers not included in 1 or 2 but that have a state mission stipulated in laws and regulations.⁴⁶

Article 54, paragraphs (10) and (11), of the Public Service Law state that sanctions on public service providers can only be imposed on agencies in the third category, that is, non-government agencies and non-state or regionally owned public service providers with their mission stipulated in laws and regulations.

Sanctions can include freezing or revoking the permits issued by government agencies if the following provisions are violated:

- a. the obligation to establish service standards (Article 15 a);
- b. the granting of permits and/or allowing other parties to use public service facilities and/or infrastructure that result in public service facilities and/or infrastructure not functioning

⁴² Article 3 and Article 9 Regulation of the Minister Transportation Number 89 of 2015

⁴³ Article 11 Regulation of the Minister Transportation Number 89 of 2015

⁴⁴ Article 16 Regulation of the Minister Transportation Number 89 of 2015

⁴⁵ Article 54 (2) Public Service Law Number 25 of 2009

⁴⁶ Article 5 (3) & (4) Public Services Law no. 25 of 2009

- or not in accordance with their designated purpose (Article 26);
- c. financing other activities using the budget allocations intended for public services (Article 33 (3)); and
- d. not following up on the results of complaint management (Article 36 (3)).

The provisions that threaten sanctions on non-government agencies, non-state or regionally owned enterprises, and government and state or regionally owned enterprise officers are not appropriate for two reasons. *First*, as the provision of public services is the responsibility of both the officers and the agencies providing the public services, rewards for achievements and punishments for poor services should be applied to both officials and agencies.

Second, to boost public service performances, both rewards and punishments must be performance-based. Punishments issued to officials as summons, reprimands, or dismissals should be viewed as efforts to improve performance rather than disciplinary. Rewards and punishments for individual officials and agencies must be proportional and performance-based.⁴⁷ Therefore, the relationships between individual performances and agency performances require a provision of rewards and punishments that is focused on both individual officers and the agencies. Individual performance-based punishments can be imposed on officials and agency

performance-based punishments can be imposed on all agencies, including government agencies. However, imposing such rewards and punishments and improving public service performance require further legal developments or a revision of the Public Service Law. As public sector innovation is a key contributor to national growth and the welfare of citizens⁴⁸, innovations associated with the rights of the community to be compensated for public service losses must be considered.

Consumer Protection Law Number 8 of 1999 (UUPK) states that consumer rights must be protected, which includes the right to be compensated for services that are in breach of the agreement or are not ⁴⁹of the quality expected, with compensation including goods replacements. Based on the definition of services in the UUPK, which is any service provided to the community to be utilized by consumers, this compensation provision covers public services provided to the community.⁵⁰

Because the new NPM reforms have refocused service provision on service recipients, the Consumer Protection Law provisions should also apply to government agencies.

The urgent need to implement SOP

Many public service compensation settlements have not been effective because of the lack of clear SOPs and the absence of any legal basis for public service organizations, especially government agencies that receive their financial resources from the APBN and/or the APBD, to

⁴⁷ Laode Rudita, "Manajemen Kinerja: Kepemimpinan, Nilai Organisasi, Dan Reward-Punishment Berbasis Kinerja," *Jurnal Kebijakan Dan Manajemen PNS (Civil Service)* 9, no. 1, Juni (2015): 48.

⁴⁸ Paul Windrum and Per Koch, *Innovation in*

Public Sector Services (Entrepreneurship, Creativity and Management) (USA: Edward Elgar Publishing Inc., 2008), 3.

⁴⁹ Article 47 (h) Consumer Protection Law No. 8 of 1999

⁵⁰ Article 1 point 5 Consumer Protection Law No. 8 of 1999

have a compensation budget. While financial compensation and payment deadlines can resolve the non-fulfillment of service standards, such a mechanism could also be misused by citizens or unscrupulous providers.⁵¹ Therefore, Article 50, paragraph (8) of the Public Service Law mandates that the public service compensation mechanism and the terms of payment be regulated by a Presidential Decree, which to date, has not been established.

Therefore, the Presidential Decree must be immediately drafted and established based on the following objectives. *First*, the regulation must be seen as the legal basis by service providers and the Ombudsman to settle community compensation for public service losses using non-litigation mechanisms when a dispute occurs. The Public Service Law must regulate the procedure for dispute settlements over public service compensation and state which authorities are authorized to resolve the dispute. There are at least two ways to settle public service compensation loss disputes in Public Service Law; non-litigation resolutions through the Ombudsman, and litigation resolutions through the Court of Law.⁵²

When a dispute occurs, the Ombudsman can conduct conciliation, mediation, and special adjudication to handle compensation

claims.⁵³ The special adjudication mechanisms and procedures regulated in the Ombudsman Regulation were required by law to be implemented no later than five years after the promulgation of the Public Service Law, that is, before July 18, 2014.

However, without the Presidential Decree, it is almost impossible to implement the public service compensation mechanism. To overcome these obstacles, the Ombudsman issued Ombudsman Regulation Number 31 of 2018 regarding special adjudication mechanisms and procedures. However, the issuing of this Ombudsman Regulation did not automatically allow these mechanisms to be implemented as the Presidential Decree is the key to implementing the Public Service Law compensation provisions.⁵⁴

Second, because public services use state finances, their revenue and expenditures are based on Ministry of Finance laws and regulations. Therefore, at present, there is no legal basis for service providers in government agencies to compensate people suffering from public service losses. *Third*, in the end, the Presidential Decree provides legal certainty for citizens to obtain compensation for any losses suffered from the non-fulfillment of service standards.

The identified compensation mechanism matters that need to be regulated in the Presidential Decree are:

1. The terms and conditions that may give rise to compensation, including the scope of the arrangements covered by the complaint

⁵¹ KemenpanRB, *Policy Note Rancangan Peraturan Presiden Tentang Mekanisme Dan Ketentuan Pembayaran Ganti Rugi Dalam Pelayanan Publik*, 2020.

⁵² Muhammad Adiguna Bimasakti, "Dispute Settlement In The Ombudsman And The Court Of Law Regarding Compensation In Public Service Dispute," *Jurnal Hukum Dan Peradilan*

10, no. 2 (2021): 277–99, <https://doi.org/10.25216/jhp.10.2.2021.277-299>.

⁵³ Bimasakti.

⁵⁴ Asep Cahyana, "Ganti Rugi Pelayanan Publik, Covid-19, Dan Ombudsman Baru," *detik.com*, 2020, <https://news.detik.com/kolom/d-5154934/ganti-rugi-pelayanan-publik-pandemi-danombudsman-baru>.

- mechanism and settlement terms for providers in accordance with the provisions of Article 47 to Article 50 of the Public Service Law, and for the Ombudsman in accordance with the provisions of Article 50 of the Public Service Law and the Ombudsman Law;
2. Obligations by public service providers to develop and make public SOPs for dealing with public service compensation;
 3. A requirement that providers settle compensation disputes directly without the need for a complaint mechanism, with the compensation types and methods included in the providers' service declarations;
 4. Clear procedures for settling compensation cases:
 - a. Clear compensation criteria outlining which organization is responsible;
 - b. Clear compensation categories that specify the type, amount, and service failures that can attract compensation claims;
 - c. Identified responsible officers or units;
 - d. Clear complaint mechanisms there are compensation disputes;
 5. Ombudsman settlement procedures for special adjudications;
 6. Budget and monetary compensation payment management including arrangements that include an obligation by providers to budget for compensation payments in accordance with government agency procedures and financial cycles, and an assurance that any compensation payments are

the responsibility of the respective institutions; and,

7. Free administrative services for unfulfilled public services and a description of compensation settlements that can be provided in other forms (non-monetary).

IV. Conclusions and Suggestion

The public expects that public services will be provided in accordance with service standards. Therefore, when the public suffers losses from the non-fulfillment of these service standards, they should be entitled to compensation from the organization. However, in Indonesia, as the Public Service Law accountability for losses is embedded in the public complaint mechanism, no provider responsibilities for losses suffered from poor public services are specified.

Resolving public service losses through the current complaints mechanism is inappropriate for several reasons. *First*, it indicates that public service implementation has not been based on community needs and is not sensitive to community losses. Ideally, public services should be oriented toward serving rather than steering, that is, public service providers must responsively serve public needs rather than steering citizens to complain. This means that service provision officials must be active when losses occur by immediately implementing steps to resolve the losses arising from their non-fulfillment of their obligations.

Second, the complaint-handling management mechanism is relatively ineffective, time-consuming, and bureaucratic, with many complaints not being followed up. One of the reasons for this is that the complaints management mechanism is not performance-based and has unprofessional staff. The key reasons that a public

service compensation mechanism has not yet been developed are been the lack of a Presidential Decree that outlines the public service compensation mechanism, the lack of public service compensation SOPs by service providers, and the lack of legal certainty in the community regarding the compensation it can receive from any incurred losses.

Therefore, it is recommended that the complaint-based compensation settlement system be immediately revised to enable active, timely compensation settlements by the offending organizers/providers, which also requires that the Public Services Law be amended, for which the air flight delay loss resolution system could be referred to as a good example. As compensation settlements should be part of service standards, culturally aware, professional, competent, and responsive officers are needed by every service provider. It is vitally important that the Presidential Decree outlining the public service compensation mechanism be promulgated as soon as possible to give the citizenry some legal certainty about the delivery of effective public services and the service compensation mechanisms.

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