

Application of Transparency and Equality of Handling Principle in Settlement of Complaint in Indonesian Judiciary

Lanka Asmar¹ Fikri Riza¹ Adithiya Diar^{2*}

1. Currently completing Law Doctoral Program, a college student at Graduate School, University of Jambi, Jambi, Indonesia

2. Lawyer in Law Office Adithiya Diar & Partner, and Muhammadiyah Youth's Regional of Jambi Province, Indonesia

Abstract

Democratic countries embrace and incorporate the principle of transparency in every policy they made to ensure good governance. One example of transparency in the judiciary is one day publish. Transparency in justice system is closely related to settlement of complaint both in the procedural law and the court judgment. There are four steps of settlement in the judicial system: first, written complaint. Recently, the Supreme Court develops an application to handle complaint called Monitoring Information System (hereinafter referred to as SIWAS). Development of SIWAS is based on Act Republic of Indonesia Supreme Court Regulation No. 9 of 2016 on Whistle Blowing System. Second, declaring clear information. Third, addressing the complaint to where the defendant works. Lastly, submitting the complaint to complaint desk. Legal and economic justice for the defendant is important to consider in handling of complaint due to economic responsibility of the defendant (a civil servant or a judge at the Judiciary) to other parties such as husband/wife, children, parents, etc. There is an adage in handling of complaint, "The higher the rank, the more to do with politics".

Keywords: Application of transparency and Equality, Complaint, Public Service, Indonesian Judiciary.

I. Introduction

Democratic countries, basically, embrace the principle of transparency to ensure good governance. This means the leadership incorporates the element of transparency in every policy it makes.¹ The principle of transparency is applied to create good public service.

Article 4 alphabet (g) act No. 25 of 2009 on Public Service² stated that the administration of public service is built upon the principle of equality of treatment/non-discriminative treatment. It is determined by the quality of service to public. Wyckof defines service quality as the extent to which the expected quality and the control of quality meet public expectation. If the perceived quality of service is as expected, the service is said to be good or satisfying.³

The Supreme Court, as the executor of judicial power, has a significant role in public service, in particular, for justice seeker. Article 32 subsection 1 in Act No. 3 of 2009 on Supreme Court⁴, stipulates that the Supreme Court holds the highest authority to monitor the administration of justice in all courts. In addition, it also has the authority to publish products such as Supreme Court Regulation (hereinafter referred PERMA), Supreme Court Circular (hereinafter referred SEMA), and Fatwa or Decree of Chairman Supreme Court (hereinafter referred KMA). The right to publish these legal products is regulated in the Supreme Court Act Number 14 Year 1985 article 79⁵, that is: "the Supreme Court can further regulate the things that are necessary for the smooth administration of justice, if the things that have not been sufficiently regulated in this Act".

The Supreme Court has established a Chairman of the Supreme Court decision No: 076/KMA/SK/VI/2009 on Guidelines of Handling of Complaint in the Environment of the Institute of Justice. The handling of complaint represents "New Public Service (NPS)". Running a government is not the same as running a business organization. For NPS, the end-user of public service is treated as citizen, and not as costumers⁶.

This study relies on theory of value and theory of justice. Theory of value explains about the facts of humanity, vulnerability, and dependency to other people⁷, meanwhile, theory of justice discusses about the

¹ Arifin Tahir, *Criticism Transparency in Local Governance System*, accessed from <http://repository.ung.ac.id/get/karyailmiah/234/KRITIK-TRANSPARANSI-DALAM-SISTEM-PEMERINTAHAN-DAERAH.pdf>

² Act Republic of Indonesia No. 25 of 2009 on Public Service

³ Nikita Sari and Radjikan, *Relationship Between Apparatus Quality With Quality Services*, accessed from jurnal.untagsby.ac.id.

⁴ Act Republik of Indonesia No. 3 of 2009 on Second Amendment Act No. 14 of 1985 on Supreme Court.

⁵ Act Republik of Indonesia No. 14 of 1985 on Supreme Court.

⁶ Dimas Ramdhana Prasetya, et., *Analysis Of The Management Of Public Complaints In Order To Public Service (Studies in Communications and Information Agency of Malang)*, accessed from administrasipublik.studentjournal.ub.ac.id/

⁷ Gordon Graham, 2014, *Theories of Ethics*, Publisher: Nusa Media, Bandung, page. 90

ethical value be held by people as individual human beings. Justice can be in form of constant will to give what is right to others¹.

Complaints resolution in the judicial environment should meet the standard of public service. It should include the principles of transparency and equality of treatment. There is an assumption in the public that the way the judiciary handles complaints is not based on public service principles and that the system is still using traditional method. For the author, this is worth investigated. Additionally, there is also an assumption that the defendant is always the wrong side, and, to the contrary, the plaintiff is always right. The right and wrong from the point of view of the defendant and the plaintiff is addressed in this article.

As for the problems in this article include:

1. How is the implementation of transparency in public service?
2. How is the handling of complaints administered in environment of institute of justice?
3. How is the principles of transparency and equality of treatment implemented in handling of complaints in the environment of justice?

II. Discussion

1. Implementation of the principle of transparency in public service in the environment of the institute of justice

The goal of public service is to produce excellent service. By service is meant deliberate action of giving help to other people in need. Excellent refers to the quality of service. It means a dynamic condition of service products, human beings, processes, and environment that meet or exceed expectation. There are five (5) important elements in excellent service: 1) the service provider, 2) the customer, 3) the types of service, 4) optimum assistance, and 5) treatment in service.² Public service needs something more than effectiveness and efficiency. It needs justice because, when it comes to public service, the poor is often marginalized.

The extent to which the society is satisfied with the service given should be noted by government agencies. The following five (5) factors are important to assess customer satisfaction: 1) tangible aspects including physical infrastructures that support public service such as the physical appearance of the officials; 2) reliability and punctuality of the officials in giving and providing service; 3) responsiveness, means access to contact the officials and their willingness to help customer; 4) assurance emphasizes knowledge, propriety, and attitudes of the officials to avoid bad impression of the service; and 5) empathy, refers to the ability to understand customers' needs. The latter aspect includes the ability of individual officer to address customer's concern.³

Good public service results in good governance. In general, good governance is achieved if the government and other public institutions are welcome to new ideas and suggestions and are responsive to public interests. Another significant factor of good governance is norms, ethics, and values that stimulate the public to control the government and the development in order to ensure that the rights of the people are served.⁴ Governance contains state, private sector, and society. State functions to create conducive political environment, private sector serves to create job opportunities and revenues, and society functions to create positive social interaction, both in economic and political environment, including asking people to take active participation in economic, social, and political activities. Society refers to non-governmental organizations and other professional organizations.⁵

Good governance integrates the principle of transparency in every policy it makes. Transparency means obvious or able to be seen through. Literally, it means openness. It refers to openness in process. Transparency, according to Organization for Economic Cooperation and Development (OECD), means:

A core governance value. The regulatory activities of government constitute one of the main context within which transparency must be assured. There is a strong public demand for greater transparency, which is substantially related to the rapid increase in number and influence of non-governmental organizations (NGOs), or 'civil society groups', as well as to increasingly well education and diverse populations.⁶

Misbah L. Hidayat defines transparency as the availability of information regarding the process and administration of decision making to public. In general speaking, accountability will not be achieved without

¹Achmad Ali, 2012, *Reveal Legal Theory and Judicialprudence's Theory Including the Interpretation Act*, Publisher: Kencana Prenada Media Grup, Jakarta, page. 217 - 221

²Johanes Basuki, 2012, *Culture Public Service*, Publisher: Hartomo Media Pustaka, Jakarta, page 330.

³*Ibid*, page. 232

⁴Lijan Poltak Sinambela, 2016, *Public Service Reform (Theory, Policy and Implementation)*, Publisher: PT. Bumi Aksara, Jakarta, page. 51

⁵Delly Mustafa, 2014, *Government bureaucracy*, Publisher: Alfabeta, Bandung, page. 187 - 188

⁶Arfin Tahir, *Loc.Cit*.

transparency and clarity of the rule of law.¹ Transparency is government's accountability to public.² There are three faces of transparency: a policy open to scrutiny, open access to government policy, and actuation of the principles of check and balanced between executive and legislative agencies. Transparency provides accurate and reliable information to public, therefore, building mutual trust between government and the public.³

Service at the Supreme Court and other justice institutions has been transparent and accountable.⁴ The following are the example of transparency models at the judicial environment⁵:

- a. Political, constitutional transparency. Justice system is accountable to political institution, including being impeached by the parliament and complies with constitutions.
- b. Societal transparency. Public controls the judicial system through mass media, examination of judge's decision, critics to court judgment, possibility of dissenting opinion (this is also considered as professional transparency).
- c. Legal (personal) accountability. Should an error of judgment takes place, the assemblies of honor of judges can dismiss the judge (who makes such error). It is, hence, legal action against the judge's decision is available.
- d. Legal (vicarious) accountability. State is responsible to error court judgment (state liability), state can ask the judge to take the responsibility as well (concurrent liability).

One example of the application of the principle of transparency is one day publish. Transparency is closely related to the way the judicial system handles complaints both in the procedural law and the court judgment. Especially, in the recent time, the judiciary has developed an application to track or monitor the progress of a case. The system is called SIPP (*Search Case Information System*) or case tracking system and SIWAS. The objective is to improve the quality of complaint settlement procedure as public service. Public, for sure, is also expecting transparency at the admission of government employee and judges at judicial institutions. The end goal of transparency at the judiciary is customer satisfaction.

2. Administration of handling of complaints at the judicial system

Service to public can be upgraded by providing a system in place that allows people to file complaints when they are not satisfied with the service provided or when they feel that the service is not as good as promised. For successful development of complaints systems, transparency is required. It means that complaint system should be built on the basis of transparency where information on how, to whom, when, and the court fees can be accessed by public. This information must be conveyed in a clear and simple language that can be easily understood by public.⁶ Complaint is important for the government as a feedback on performance. It aims to improve the administration of governmental activities.

The Supreme Court, as a public institution, should be committed to open information. Open access to information regarding judiciary is everybody's needs. Commitment to provide information about the process and the court judgment represents a true access to justice provided by the judicial system from the lower lever to the Supreme Court.⁷ Commitment is shown in the Chairman of the Supreme Court decision number 076/KMA/SK/VI/2009, which stated that *the Supreme Court is committed to guard the image and authority of the judiciary and improve public trust to the judiciary.*

The meaning of complaint, according to chapter III alphabet (a) Decree of the Chairman of the Supreme Court number 076/KMA/SK/VI/2009, is any report containing information or indication of power abuse, miss of conduct of judicial officials by public, the members of the judicial institutions, other institutions, mass media, or other relevant sources. Complaints in the judiciary are handled in the following principles:

1. One door policy. This policy means that complaints received by the Supreme Court, the Appellate Court, and the Court of First Instance should be acknowledged by supervisory board or *Badan Pengawasan*.
2. Objectivity. It means that complaint resolution is enacted on the basis of criteria specified in existing rule of law.
3. Effectiveness, efficiency, and economical. This refers to a condition where resolution should be right on target; efficient in term of resources, budget, energy, and timely; and based on prevailing

¹Arfin Tahir, *Ibid*.

²Cui, *Linkage Accountability and Transparency in Achieving Good Governance*, Journal of Regional and City Planning, Vol. 15

³Delly Mustafa, *Loc. Cit*, page. 196

⁴Anonim, accessed from <http://www.hukumonline.com/berita/baca/1t52c4e9bea1671/menjaga-transparansi-peradilan-di-tahun-politik>

⁵Amran Suadi, 2014, *Monitoring System Judicial Bodies in Indonesia*, Publisher: PT. Raja Grafindo Persada, Jakarta, page. 54

⁶Johanes Basuki, *Loc. Cit*, halaman. 134

⁷Ridwan Mansyur, 2015, "*Disclosure of Information in Justice in order Implementation integrity and Legal Certainly*", Publisher: Journal of Law and Justice, Jakarta, Volume 04.

regulations.

4. Accountability and transparency. The principle means that the process should be accountable to public in accordance with the rule of law.
5. Secrecy. It refers to a condition where resolution of complaints is carefully performed with consideration of keeping the subject of report and the plaintiff identity a secret.
6. Fair and balanced. This means that both the defendant and the plaintiff are given opportunity to share their version of story, and, therefore, shall be heard for that. From here a thorough examination of the case begins.
7. Appreciation to the profession of judge and the authority of the judiciary. This means that the process of resolution should not undermine judge's independency and judiciary authority.¹

Administration of complaints resolution at the environment of the institute of justice can be carried out in the following ways: 1). Written complaint. Recently, the Supreme Court has established an application to handle complaint called SIWAS. Development of SIWAS is based on the Supreme Court Regulation Number 9 Year 2016² on Whistle Blowing System. 2) declaring a clear information, 3) addressing the complaints to where the defendant works, and 4) submitting the complaints to complaint desk.

The subjects of complaint at the judiciary are: registrar, judge, and structural official. Rule of ethics is the basis of complaint handling procedure. Government ethics or ethic of state administration is related to code of professional conduct of state apparatus. They include all norms of ethical rule and guideline of good behavior at all levels of office environment. Generally, there six (6) values of standard behavior adopted in rule of ethics of public officials, they are³:

1. Prohibition of conflict of interest;
2. Wealth statement of government employees;
3. Ban gratuities;
4. Confidential position;
5. Political action; and
6. Post-retirement activity

Rule of ethics of the judicial officials are promulgated in the Decree of the Secretary of the Supreme Court of Republic of Indonesia number 008-A/SE/SK/I/2012 on Rule of Ethics of Government Employee at the Supreme Court, Decree of the Chairman of the Supreme Court of Republic of Indonesia number 122/KMA/SK/VII/2013 on Rule of Ethics and Guidelines of Behaviour of Registrar and Bailiff, and Joint Decree of the Chairman of the Supreme Court and the Chairman of the Judicial Commission of Republic of Indonesia number 047/KMA/SKB/IV/2009 on Rule of Ethics of Judges.

3. Application of the principle of transparency and equality of treatment in handling of complaint in judicial environment

Effective resolution of complaints contributes to good governance because along with this, the principles of transparency, responsiveness, and accountability are applied. Complaints should be handled transparently and be responded well in order to realize accountability. In this sense, any forms of resolution should be accountable to public. There are three elements of transparency in public service: openness of public service administration, understandable rules and procedures of public service, and easy access to information regarding public service administration.⁴

The principle of transparency is stipulated on article 2 subsection 1 of Act No. 14 of 2008 on Open Public Information.⁵ The law mentions that “*any public information is open and accessible to users of public information*”. Article 7 subsections 1 and 2 of the law also mention that⁶ “1) it is obligatory for public institutions to give and/or publish any public information under their authority – except exempt information – to those who requested for the information, and 2) it is required for public institutions to provide accurate, non-misleading information”. The Supreme Court of Republic of Indonesia has arranged (*beleid*) the application of the principle of transparency in the Decree of the Chairman of the Supreme Court number 1-114/KMA/SK/I/2011. The decision arranges the categories of information at the judiciary as follow: 1) information which should be published periodically, 2) information which should be available and can be accessed by public at all time, and 3) exempt information. Within the judicial context, the process of settlement of complaint can be accessed by the plaintiff and the judgment is published by the supervisory boards of the Supreme Court of Republic of Indonesia.

¹KMA No. 076/KMA/SK/VI/2009

²PERMA Nomor 9 Tahun 2016

³Jimly Asshiddique, 2013, *Judicial Ethics and Ethics Constitution (Perspektif Baru Tentang Rule of law and Rule of Ethics dan Constitutional Law and Constitutional Ethics)*, Publisher: Sinar Grafika, Jakarta, page. 149

⁴S. Styawan, accessed from Journal.Unair.ac.id

⁵Act Republic of Indonesia No. 14 of 2008 on Public Disclosure

⁶*Ibid*

The parties involved in complaint at the judiciary are the plaintiff and the defendant. From the perspective of the principle of equality of treatment, both parties deserve equal treatment. Both parties have to right to defend and prove their arguments. The Chairman of the Supreme Court decision number 076/KMA/SK/VI/2009 explains that¹ the rights of the plaintiff include: first, whose identity should be kept confidential; second, to convey their complaint freely; third, to receive information regarding the process of settlement; fourth, to be treated equally. Meanwhile, the right of the defendant is to be given an opportunity to defend him-/herself by presenting witnesses and evidences and received police investigation report of the case. The plaintiff has the right to submit evidences in support of the case and the defendant has the right to self-defense. In any case, the plaintiff as well as the defendant deserves to be treated equal.

The principle of equality of treatment in the process of settlement at the judiciary is an example of justice. Just in terms of legal quality and economic equality. Legal equality is equality before law and the measure of legitimacy of a government. Economic equality means equal rights of the people to participate in economic activities.² Due to defendant liability, for example his/her economic responsibility to husband/wife, children, and parents, legal and economic equality is significant during the process of settlement of complaints. There is an assumption in society that “the higher the position of the defendant, the more to do with politics”.

III. Conclusion

1. The application of the principle of transparency at the judicial system is closely related to one day publish policy, settlement of complaints both at the procedural law and the court judgment as well as to public service. The objective of transparency is to achieve public satisfaction.
2. There are four ways in which the judiciary handles complaints:
 - a. Written complaints
 - b. Declaring clear information
 - c. Addressing the complaint to where the defendant works
 - d. Submitting the complaints to complaint desk
 - e. In the process, transparency can be seen in the way the judiciary handles complaints, from the beginning to the court judgment. The plaintiff can access any information needed. The judgment – whether or not the defendant found guilty – is published by the supervisory boards of the Supreme Court of Republic of Indonesia. The principle of equality of treatment means treating all parties – either the plaintiff or the defendant – equals for the sake of justice. Justice in terms of legal equality and economic equality.

IV. Recommendations

1. It is suggested for the judiciary to be committed to the implementation of the principle transparency in handling complaints and publishing court judgment at court website.
2. It is suggested that the settlement of complaints at the judiciary follows the development of information and communication technology and benchmarks with best practices in developed nations.
3. It is suggested for the judiciary to apply the principle of transparency and equality of treatment.

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