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Indonesia's Law on Public Services: changing state-society relations or continuing politics as usual?

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**INDONESIA'S LAW ON PUBLIC SERVICES:
CHANGING STATE-SOCIETY RELATIONS
OR CONTINUING POLITICS AS USUAL?**

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Institutional reforms introduced after the collapse of the New Order regime have brought state-society relations in Indonesia under increased scrutiny. This paper uses an evaluation of Law 25/2009 on Public Services as a means to assess whether the new political setting has increased the leverage of the citizenry over the state. Adopted in July 2009, the law introduced a range of regulations for public service providers. It also expanded the responsibilities of the Ombudsman's office and called for the establishment of citizen committees to monitor public service delivery. However, the legal quality of the law is poor and the broader institutional and political environment is not conducive to its enforcement. Overall, the law aims beyond the capacity of the current political and legal system. Ironically, in order for society to gain greater leverage in politics, state capacity must increase as well.

INTRODUCTION

After Indonesia gained independence in 1949 its bureaucracy rapidly expanded. In the 1950s, the state apparatus was growing at a rate of 'something like 10 percent a year' (Scott 1972: 12), while in the 1970s the number of bureaucrats increased by 400% (Evers 1987: 666). Unsurprisingly, the bureaucracy soon became a force in its own right in Indonesian politics, and drew the attention of academics and development practitioners. Accounts of what constituted the character of this new player diverged widely. Some saw the bureaucracy as a predatory, anti-national 'state-qua-state' that was highly intrusive into citizens' lives (Anderson 1983: 488). For others it was a 'faction-torn, party-ridden, ramshackle structure incapable of action', where the power and influence of individuals and cliques came 'at the expense of organizations and institutions' (Liddle 1973: 287). Whether predatory and aggressive, or incapacitated by factionalism and therefore largely passive, the

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bureaucracy was seen as an institution that offered 'little room for give and take on policy issues or for sensitivity to public needs' (Emmerson 1983: 1,221).

In May 2010 the bureaucracy officially consisted of more than 4.7 million civil servants (Badan Kepegawaian Negeri 2010). This figure is likely to be a significant under-estimate, as it excludes auxiliary personnel ('honorarium staff') contracted under the general labour law. Police and military personnel are also excluded (Kluyskens n.d.: 5; Van Klinken and Barker 2009: 32). Nevertheless, in Indonesia's population of more than 242 million, the percentage of civil servants is remarkably small compared with that in other countries in the region.¹ Further, a large proportion of the civil service is significantly under-employed. The Deputy Director of the Ministry of Administrative Reform (Kementerian Negara Pendayagunaan Aparatur Negara), Cerdas Kaban, 'guesstimated', for example, that there were around 30–40% more bureaucrats on the state's payroll than the government actually had work for (Cerdas Kaban, pers. comm., 24 July 2009).

The bureaucracy is highly inefficient and ineffective in delivering public services at both the national (McLeod 2005) and sub-national level (Von Luebke 2009: 225) and, according to USAID (2009: 47), the quality of service delivery has stagnated over the last 10 years. Public expenditure management, organisational structures and mechanisms for staff allocation, recruitment and remuneration are all in dire need of reform. Although Law 17/2003 on State Finance established a budget and planning process based on a medium-term expenditure framework, and was intended to increase transparency, its effectiveness is hindered by legal and political obstacles (Synnerstrom 2007: 162–3). The structure of the bureaucracy is based on models that emphasise organisational symmetries instead of considering the actual workload of bureaucratic units or cost efficiency (Synnerstrom 2007: 164–5). Recruitment is carried out in a mechanistic fashion and is rarely based on need: for example, 1,200 new judges are recruited annually without any assessment of the number needed (Van Zorge Report 2009).

The civil service is a career-based system, rather than a position-based system into which professionals can be recruited when required. Payment mechanisms are non-transparent: civil servants receive a basic salary funded from the state budget, in addition to a variety of official and unofficial allowances from both budget and non-budget funds. To a large extent, the distribution of these allowances is at the discretion of senior bureaucrats (McLeod 2010; Synnerstrom 2007: 168). Endemic corruption and rent-seeking within the state apparatus weaken state capacity. Indonesians aspiring to a bureaucratic position pay significant amounts of money to be considered (Kristiansen and Ramli 2006: 207–33). In their everyday encounters with the state, citizens are confronted with demands for illegal levies or unofficial payments to expedite service delivery.² Overall, the bureaucracy continues to be characterised by 'non-transparent processes, underfunded institutions, an inadequately skilled public workforce and institutionalised corruption, reflecting a self-serving and opaque administration' (Synnerstrom 2007: 160).

1 Kluyskens (n.d.: 3) estimates the percentage of bureaucrats in the total population in 2009 at just 2.0% in Indonesia, compared with 2.8% in Singapore and 3.7% in Malaysia.

2 An idea of how little has changed in this respect over the last few decades can be gained by comparing the accounts of such practices in Mitchell (1970: 76–93) and Aragon (2007: 40–1).

The low capacity of the civil service has significant consequences. At the time of writing, Indonesia was losing ground vis-à-vis China, India, Malaysia, the Philippines, Thailand and Vietnam in education, foreign direct investment, health, infrastructure and manufacturing (Harvard Kennedy School 2010: 15). In 2009 Indonesia ranked below all major economies in the region except the Philippines on 'ease of doing business' (IFC 2009: 8). In the same year, an Indonesian child was nearly three times as likely as a Vietnamese child to die before its fifth birthday (Harvard Kennedy School 2010: vi–vii). Indonesia's poor regional performance on such a range of social indicators is symptomatic of the state's low service delivery capacity. Against the background sketched above, this paper will evaluate the recently enacted Law 25/2009 on Public Services, which constitutes an attempt to improve the effectiveness of the state in catering to the needs of its citizens.

Bureaucratic reform initiatives

Administrative reform agendas have become an international political phenomenon, and Southeast Asia is no exception (Leong 2006). In the context of the third wave of democratisation³ and the rise of the good governance debate, calls for greater bureaucratic accountability have mounted across the region (Fritzen 2007: 1,440). Indonesia embarked on an overhaul of its government structures after the collapse of Soeharto's New Order regime in 1998 (Crouch 2010: 1–14). Politicians at both the national and local level are pursuing reform to bolster their democratic credentials and distance themselves from the kleptocratic Soeharto regime – to which a majority owe their political ascent (Aspinall 2010: 21–2).

One such politician is Susilo Bambang Yudhoyono (SBY), who was elected president in 2004 on a platform that gave priority to combating corruption, collusion and nepotism. In December 2004 SBY issued Presidential Instruction 5/2004, consisting of 10 general instructions and 11 special assignments. All institutions under the authority of the executive branch of government were urged to eradicate corruption. The National Development Planning Agency (Bappenas, Badan Perencanaan Pembangunan Nasional), then under the leadership of the reform-minded Sri Mulyani Indrawati, was also instructed to prepare a National Action Plan for the Eradication of Corruption (Rencana Aksi Nasional Pemberantasan Korupsi). Both documents recognised the importance of civil service reform to these undertakings, and called for the drafting and implementation of bureaucratic reform laws (Davidsen, Juwono and Timberman 2006: 23–5).

THE LAW ON PUBLIC SERVICES

Law 25/2009 on Public Services, enacted with the support of all 10 factions in the national parliament in July 2009 after some four years of deliberation, is a seemingly important component of this initiative. It aims to improve the delivery of public services by creating mechanisms for determining minimum service

3 The term 'third wave of democratisation' is used to describe the process whereby more than 60 countries have become democratic since the mid-1970s. The first and second waves of democratisation occurred after the first and second world wars.

standards, receiving and acting on complaints when standards are not met and, in some cases, providing compensation.

Some inappropriate content

By way of preliminary comment, one undesirable feature of the new law is that it seeks to regulate certain matters that are the subject of other laws. First, the law imposes additional responsibilities on the Ombudsman that should really be the subject of an amendment to Law 37/2008 on the Ombudsman. Second, the new law seeks to reform the way the civil service is managed. While such reform is needed, to the extent that it requires changes to legislation it is inappropriate to include it in the Law on Public Services, since this deals with only a limited part of the bureaucracy. For example, the law stipulates that officials employed by public service providers should lose their managerial position if they fail to select and promote civil servants in a transparent, non-discriminatory and fair manner based on legal principles (art. 11, clause 1; art. 54, clause 7). They may also face demotion for a maximum of one year if they fail to conduct periodic performance appraisals (art. 38, clause 1; art. 54, clause 6). Sanctions for violation of civil service hiring principles or failure to conduct performance appraisals should be the same for all civil servants, regardless of whether they are involved in the delivery of public services or not. The appropriate place for disciplinary measures such as these is in an amendment to Law 43/1999 on the Civil Service.⁴

Key aspects

Law 25/2009 is motivated by a concern to ensure the provision of public services in accordance with the expectations and demands of citizens (preamble). It sets out rules and obligations for provider organisations (*penyelenggara pelayanan publik*, public service providers) and their employees (*pelaksana pelayanan publik*, public service 'implementers') (art. 1, clauses 2, 5), and outlines the rights and responsibilities of resident legal entities and citizens.⁵ The law also attempts to establish clear guidelines on the principles and objectives of public service delivery, and a framework for their implementation. These include defined service standards, mandatory service commitments, a public service information system and a system internal to the bureaucracy for monitoring and handling complaints. Citizen committees to supervise and monitor service delivery are also introduced, as well as stipulations to strengthen existing external mechanisms for the resolution of complaints. Finally, the law includes a catalogue of sanctions for various transgressions.

4 As one reviewer of this paper pointed out: 'This is a common ... feature [of Indonesian laws] due to the serious fragmentation of government ... [I]nstitutions try to regulate beyond their legal competence instead of cooperating with relevant institutions to achieve changes in the relevant laws. This practice explains much of the many regulatory conflicts in Indonesia.'

5 In fact there are no meaningful 'responsibilities' on the part of the general public in this law, unsurprisingly, given that its objective is to ensure that the state better serves its citizens. Article 19 lists the public's 'responsibilities', somewhat imaginatively, as abiding by the public service minimum standards, assisting in looking after public service facilities and infrastructure, and actively participating in and abiding by the regulations relating to public services. Such discussion is well described by the Indonesian expression '*omong kosong*' (empty talk).

Major flaws

Lack of clear justification and focus

Implementing regulations and a presidential regulation are expected to complete the operational details of the law, though none of these had been published at the time of writing.⁶ It is nevertheless possible to conduct a tentative analysis, which reveals major flaws in the law. For example, its purpose is unclear: a cogent analysis of the problems the law seeks to address is not given (such problems are not even listed) and definitions of critically important terms are often vague or missing. Most fundamentally, the law attempts but fails to define clearly what constitutes a public service – the very subject of the law – or a public service provider. There is circularity in both definitions: public services are those provided by public service providers, while public service providers are organisations that provide public services. A commonsense definition, useful in framing the following discussion, is that public services are those to which citizens have a politically mandated entitlement, and which are provided by the state (either directly or through contracted private sector firms) free of charge, or at significantly less than their cost of production.

Failure to distinguish public services from profit-oriented services

The consequences of this lack of definition are crucial. First, it leads to an incoherent listing of the scope of public services that includes 'education, teaching, work and enterprise, housing, communication and information, the environment, health, social security, energy, banking, transportation, natural resources, tourism, and other strategic sectors'.⁷ Provided they are somewhat more carefully specified, several of these items are typically thought of as public services (education, health care, *public* housing, social security and *public* transport). But others (again, more carefully specified: telecommunications and media, electricity and fuel, banking services and tourism) are simply services or commodities provided by the market at prices that cover production costs and provide a margin of profit, in the absence of any citizen entitlement. The environment and natural resources are areas of government policy concern, but do not appear to involve the delivery of services to users. The meaning of 'work and enterprise' in this context – and therefore the reason for its inclusion – is unclear, and the term 'other strategic sectors' could be interpreted to mean virtually anything, and therefore means nothing.

Second, unclear definitions implicitly lead to a failure to distinguish between the government agencies and private sector contractors that provide public services financed by government budgets, on the one hand, and the profit-oriented state-owned and private enterprises whose costs are covered by payments from their customers on the other. For example, banking, transport and tourism services are provided on a profit-oriented basis by both state-owned and private sector enterprises. There is no obvious reason why such activities should be considered

6 It was unclear at the time of writing whether there would be regulations covering the whole civil service or separate regulations for each sector. There were indications that the Coordinating Minister for Economic Affairs was drafting implementing regulations related to licensing. If every sectoral institution is drafting its own implementing regulations, this raises the question of who oversees this process and what the time-frame for completion would be.

7 The distinction between education and teaching is unclear.

public services and regulated by this law, because dissatisfied citizens can simply take their business elsewhere. One difficulty here is that various state-owned enterprises provide services that are heavily subsidised as a matter of policy, but without any suggestion that citizens have a direct entitlement to these services. The state railway company Kereta Api Indonesia is an example. The fact that this is a state monopoly provides an argument that it should be regarded as a public service provider. By contrast, it would be difficult to argue that the state-owned Garuda airline should be similarly regarded, as it has no monopoly and is profit oriented. The law provides no guidance on such cases.

Finally, various other public services that should be included are not specified. Some that readily come to mind relate to the work of the police (for example, responding to reports of theft and violence); the courts (dealing with civil disputes and individuals charged with crimes); the land titling office (dealing with land ownership claims); the departments of immigration (issuing passports) and religious affairs (controlling the Hajj pilgrimage); agencies responsible for garbage and sewage disposal; and all agencies responsible for issuing permits and licences.

Burdensome and unnecessary reporting requirements

The law requires the creation of a massive public service information system, situated at the national level and under (unspecified) ministerial supervision. This will bring together public service information from all levels of government, including data on public service providers, service standards and service announcements, as well as information about complaints management systems and performance appraisal mechanisms. Public service providers will be responsible for feeding information into the system, which will be open to the public (art. 23). Given the low capacity of the bureaucracy, it is doubtful whether this is feasible. More importantly, it is unclear what purpose such a database would serve, other than generating jobs for bureaucrats and extending the controlling ministry's authority over other government agencies. What matters to the public, presumably, is simply whether service delivery is satisfactory and, if not, whether complaints are taken seriously. The proposed database, covering scores – perhaps hundreds – of highly diverse public services, is unlikely to contribute to such an outcome. It would be sufficient if the respective line ministries and government agencies provided information to the public on service delivery under their authority. Government agencies are unlikely to respond with any enthusiasm to the demand to supply information to this database.

PROVISIONS TO IMPROVE SERVICE DELIVERY

Because of space limitations, it is not possible to discuss further the many drafting inadequacies of Law 25/2009; however, the flaws described so far could be easily rectified. These matters are set aside to examine three provisions internal to the bureaucracy that are aimed at improving public service delivery: the introduction of mandatory service standards, the establishment of monitoring and complaints handling mechanisms, and the imposition of sanctions. The article then considers two provisions in the law that are intended to establish or strengthen external oversight mechanisms: the stipulation of new responsibilities for the Ombudsman's office and the establishment of citizen committees

tasked with the 'supervision' of public service monitoring. The law is evaluated mainly in regard to its enforceability.

Defining service standards

Defining the service standards against which provider performance will be judged is a precondition for improving bureaucratic accountability. It is therefore a requirement under the law (art. 15, clause a). These standards include clear time-frames for service delivery (art. 21, clause d) and tariffs and fees for specific services (art. 31). Evaluations of public service providers must be based on clear and measurable indicators (art. 10, clause 3), and undertaken through internal and external supervisory mechanisms. Direct superiors (*atasan langsung*) as well as functional supervisors (*pengawas fungsional*) within public service providers are expected to provide internal assessments. External assessment is provided through the public, the Ombudsman's office and the legislature (art. 35).

Internal oversight mechanisms

Monitoring and complaints management

The introduction of service standards would be futile in the absence of mechanisms to monitor service delivery and an effective system to receive and respond to complaints. Hence the law requires the establishment of monitoring and complaints mechanisms. Responsibility for the direction, supervision and evaluation of service provision resides with ministers, directors of government agencies and contracted agencies at the national level. At the provincial level, it resides with governors, and at the local level with district heads (*bupati*) and mayors (*walikota*). Ministers, directors of government agencies and the like are required to report to the president and the national parliament. Governors should inform both their provincial parliaments and an unspecified central government minister about the outcome of public service delivery evaluations. District heads and mayors report to the governor of the province and the local parliament (art. 6).

Complaints management by public service providers involves publicising the contact details of personnel operationally responsible for complaints handling, and identifying executives ultimately in charge of the process; outlining procedures for the management of complaints; recording the identity of complainants; reporting on the process and the outcome of complaints; and monitoring and evaluating the system overall (art. 36–37). The importance of clear time-frames for complaints handling is emphasised in art. 50, clauses 1–2.

Imposing sanctions

Chief executives or other officials of public service providers who fail to comply with the regulations on complaints handling are subject to sanctions (art. 54, clause 5), including written warnings, salary reductions, demotions and criminal charges for individual officials, and suspension or revocation of licences for public service providers (art. 54, clause 10).⁸ Behaviour invoking sanctions includes

8 Since most providers are government organisations, the idea of suspension or revocation of licences seems neither appropriate nor realistic. For private sector contractors it would seem more sensible to include appropriate sanctions for non-performance in the terms of their contracts with the relevant government.

failing to provide services in accordance with standards; ignoring complaints; by-passing established rules on 'contracting-out' services; and allowing ineligible parties to use public service facilities.

External oversight mechanisms

The law also aims to establish external oversight mechanisms to improve public service delivery. There are stipulations on the expansion of the role of the Ombudsman and the establishment of citizen committees tasked with deliberating on service standards and monitoring service delivery. Providers are required to respond to complaints from the public and recommendations from the Ombudsman, as well as to suggestions from the national and regional legislatures.

Expanding the role of the Ombudsman

Offices of the Ombudsman can play an important role in strengthening bureaucratic accountability, by providing the public with access to independent complaints handling mechanisms and reporting on violations of public service standards. An Ombudsman was established in Indonesia in 2000 with the adoption of Presidential Decree 22/2000. The office was assigned two main tasks: to create an environment that would help to curb corruption, and to defend the right of citizens to high-quality public service delivery.⁹ In September 2008 the parliament passed Law 37/2008 on the Ombudsman, which strengthened the legal basis for the institution.¹⁰ With the enactment of this law, the Ombudsman became an official state institution much like the Corruption Eradication Commission, responsible to the national parliament and the president (art. 42). Over the last few years branch offices have been established in the provinces of Central Java and North Sumatra, in addition to the head office in Jakarta (Crouch 2008: 386–9).

As noted, the Law on Public Services expands the responsibilities of the Ombudsman. Most important is the obligation to establish regional branches within three years of enactment of the law to support the head office in monitoring the delivery of public services. The law does not elaborate on the monitoring functions and complaints mechanisms involving the Ombudsman, but refers to the Ombudsman regulations for details (art. 46, clauses 3–4, 7). The Ombudsman is also given authority to mediate, conciliate or adjudicate financial settlements. The adjudication mechanism is to be put in place no later than five years after the enactment of Law 25/2009. The exact rules of adjudication are to be set out by the Ombudsman (art. 50, clauses 5–7).

Strengthening the role of the public

One of the main aims of the public services law is to increase the leverage of the public over the bureaucracy. Two stipulations aimed at enabling this merit close attention. First, the law formally expands public participation in relation to public service provision. Service providers must involve the public in the drafting of public service standards. Currently the law only specifies that public participation

9 For an account of the origins of the Ombudsman's office, see Crouch (2008: 385–90).

10 Prior to the enactment of this law, the Ombudsman was responsible to the president. However, the Ombudsman's office was already operationally independent under the relevant presidential decree.

should be guided by principles of non-discrimination and be directly related to public service issues (art. 20, clauses 2, 4–5). Further clarification is to be provided in subsequent regulations.

Second, the law assigns extensive 'monitoring' functions to the public. Members of the public are given the power to register formal complaints if providers neglect or violate their obligations, or if officers deliver services that are not in accordance with service standards (art. 40, clause 3). They are entitled to receive a formal response to such complaints (art. 44, clause 3) and can complain directly to providers. Complaints may also be made indirectly to the Ombudsman and the national and regional parliaments. In addition, members of the public are entitled to make claims for compensation (art. 42, clause 4), and to file lawsuits against providers that fail to meet minimum service standards. Most importantly, the law allows for the establishment of public service supervision agencies (*lembaga pengawasan pelayanan publik*) at the national and local level. The exact details of how public participation in the definition, administration and monitoring of public services will be accomplished remain to be clarified in subsequent implementing regulations (art. 39, clauses 3–4).

ANALYSIS: ADMINISTRATIVE REFORM TYPES AND ENFORCEMENT OF THE LAW

In the last decade, during which most countries in Southeast Asia embarked upon administrative reform initiatives, four broad reform types have crystallised, varying in purpose and scope (Fritzen 2007). Some initiatives emphasise rules and are directed at suppressing unwanted bureaucratic behaviour. Others are based on a more positive 'promotional' approach that tries to improve bureaucratic culture and create incentive structures conducive to efficient service delivery. Both types of initiatives can be implemented by targeting either state institutions or the broader political context in which the bureaucracy is embedded. Initiatives that target state institutions can be said to be organisational in scope, and those that target the broader political context can be said to be structural in scope. This typology of reform approaches is depicted in table 1.

Government selection of reform approaches is influenced by historical factors, one of which is the pattern of relationships between politicians and bureaucrats. As Fritzen (2007: 1,451) explains:

[t]he historical legacy of two key variables influence[s] reform programs: [e]xtent of separation ... between political and bureaucratic accountability; and [e]xtent of political institutionalization at time of independence. Greater levels of both of these variables are hypothesized to lead countries to pursue higher-leverage 'promotional' bureaucratic reforms [and conversely] (Fritzen 2007: 1,451).¹¹

Indonesia scores low on both the separation and institutionalisation variables. A few years after independence the bureaucratic apparatus became highly

11 Promotional reform initiatives require capacities that are likely to be sufficiently developed only in consolidated democracies, where principles of accountability are well established. These reform types also require an 'autonomous' bureaucracy independent of special political interests (Fritzen 2007: 1,442).

TABLE 1 *Typology of Bureaucratic Accountability Reform Initiatives*

Strategy	Scope	
	Organisational (state institutions)	Structural (broader political context)
Controlling (suppressing unwanted bureaucratic behaviour)	1 Rules and restraints e.g. asset disclosure requirements; internal rules; complaints and feedback dealt with administratively	3a Managerialist version: political control 3b Democratic version: e.g. watchdogs; transparency-based approaches; independent anti-corruption commissions
Promotional (improving bureaucratic culture)	2 Culture and incentives e.g. meritocratic promotion; improvement of organisational culture; performance measurement; pay reform; administrative decentralisation	4a Managerialist version: e.g. privatisation; enhancement of competitive pressure; introduction of user fees; establishment of independent statutory agencies 4b Democratic version: democratic decentralisation/devolution

Source: Adapted from Fritzen (2007): 1,442.

politicised – via political parties after the 1955 elections and through coalitions between the bureaucracy and the military after 1959. Then after 1966 the New Order regime created various laws and regulations to bring the state apparatus under its control, including a regulation that made every bureaucrat a member of the regime's Golkar organisation (effectively a highly privileged political party). In addition, there was no cohesive, authoritative bureaucracy in place at the time of independence. Even after Soeharto had created a highly centralised state apparatus, the bureaucracy continued to suffer from 'little self-confidence' (Anderson 1998: 32), and the New Order regime ruled over what was essentially a weak state apparatus (Slater 2010: 114).

Against this backdrop, the majority of bureaucratic reform initiatives adopted since 1998 have focused on 'rules and restraints' (top part of table 1) aimed at controlling civil servants, rather than creating an incentive structure to improve their performance. For example, reforms have required senior civil servants and agency heads to declare their wealth, and have subjected their business interests, at least formally, to official monitoring. In a similar spirit, the Corruption Eradication Commission has delivered a string of high-profile arrests, including those of governors and the heads of various public service providers. Aulia Tantowi Pohan, the father-in-law of the president's son, was arrested on corruption charges in November 2008. Likewise, Syamsul Arifin, governor of North Sumatra, was detained for corruption in October 2010.

At the same time, promotional reform initiatives (bottom part of table 1) remain under-developed. The Ministry of Finance (MoF) is one of the few government

bodies that has adopted reforms of this kind, including a remuneration structure comparable with that of the private sector and – at least on paper – an internally open job application process (McLeod 2008: 197–201).¹² Other state agencies have tried to emulate some of these initiatives, including the Supreme Audit Agency (Badan Pemeriksa Keuangan) and the Supreme Court (Mahkamah Agung).¹³ Overall, promotional reform initiatives are still rare and currently affect only around 2% of the total public service (Buehler 2010a: 6).

The content and scope of the Law on Public Services reflects the spirit of post-New Order administrative reform. The law favours control, monitoring and punitive measures over the creation of promotional incentive structures. This is most immediately obvious when looking at the monitoring and evaluation system and the battery of sanctions applicable under the new legislation. While the purpose of the law is 'control', the scope of the law is both 'organisational' and 'structural' (quadrants 1 and 3 of table 1). To be effective, restraint-oriented civil service reforms need to be embedded in a political and institutional environment conducive to the enforcement of the punitive measures on which they rely. The following paragraphs evaluate the amenability of the current political and legal context to the enforcement of both the organisational and structural control measures contained in the new law.

Organisational control measures and their enforcement

The new law introduces various organisational rules and restraints, such as mandatory service standards, monitoring and complaints mechanisms, and numerous sanctions, but a range of obstacles hinder their enforcement.

Service standards

A sound understanding of the cost of government services is an important prerequisite for defining minimum service standards. At present, expertise for costing services is inadequate in Indonesia, especially within local government. Providers responding to demands from the public may therefore define public services or set minimum standards without taking fiscal realities into account. There is a serious risk that citizen committees and public service providers will be overambitious when formulating such standards and render them fiscally unachievable. This would have significant negative consequences in terms of respect for the new law. Broader political dynamics also seem likely to weaken enforcement, particularly at the level of local government, where most public services are delivered. Local governments might (reasonably) perceive the requirement to formulate public service standards and to report on their performance to higher levels of government as an attempt by the central government to diminish their autonomy. Under Law 22/1999 on Regional Government, most public service delivery functions were transferred to districts and municipalities and, to a much lesser extent, to provinces. Subsequent amendments contained in the

12 In reality, only a small number of positions (within the MoF's training institute and the Center for Policy Analysis and Harmonization) have been filled through 'open' application procedures (albeit open only to applicants from within the ministry).

13 Ironically, the Supreme Court remains secretive about the status of its program, and no information about its progress was available at the time of writing.

successor Law 32/2004 required minimum service standards for obligatory functions of local governments, but not for optional functions (Ferrazzi 2005: 228). By contrast, the Law on Public Services requires the definition of minimum service standards for all public services. Law 25/2009 is therefore inconsistent with Law 32/2004. Hence, it remains to be seen whether the regulations on mandatory service standards dictated by the national government can be reconciled with the interests of sub-national governments post-decentralisation.¹⁴

Complaints handling mechanisms

There are also considerable challenges to the implementation of the oversight and complaints mechanisms. First, the law contains insufficiently developed regulations on the protection of complainants. It simply states that anonymity shall be granted under 'certain circumstances', and that if making a complaint could endanger a citizen, separate hearings must be conducted for the complainant and representatives of the provider (art. 48, clause 3). But the law does not specify what constitutes such 'circumstances' or 'dangers'. While this law might not be the appropriate place to deal with such matters, more stringent rules on witness protection would be useful, because the broader framework for witness protection is highly inadequate. Law 13/2006 on Witness Protection established a witness and victim protection agency, but its drafting suffers from serious shortcomings. These include a narrow understanding of who is considered a witness, an unclear definition of what constitutes a threat, and a failure to stipulate how the state should protect witnesses, including whistle-blowers (Asian Human Rights Commission 2007). Owing to its poor formulation, this law is rarely put into practice.¹⁵ Inadequacies such as these potentially undermine the proper enforcement of the complaints handling mechanisms in Law 25/2009.

Second, the law's stipulations on evaluation and monitoring are likely to create tensions between national and regional governments. According to the law, directors of government agencies report directly to the president and the national parliament (art. 6, clause 4). Governors are obliged to report to the provincial parliament and the (unspecified) relevant minister at the national level (art. 6, clause 5). District heads and mayors are accountable to their own parliaments as well as to the provincial governor (art. 6, clause 6) (even though the latter appears to have no power of sanction over them). District heads and mayors may perceive this as a re-centralisation of New Order power structures. Their resistance to implementing the law under these circumstances is likely to result in ineffective monitoring.

Realpolitik might also paralyse the mechanisms for complaints handling. The law tries to provide both vertical and horizontal accountability by making service providers and individual officers accountable for their handling of complaints to

14 This may be especially problematic in regions that have had a difficult relationship with the centre in the past, such as Aceh. Formally semi-autonomous, most of that province's bureaucratic regulations continue to be defined by the national government.

15 Ironically, Indonesian bureaucrats have discovered that the Law on Witness Protection can be used as a means to evade corruption investigations. In past months, state officials have repeatedly sought the help of the Witness and Victim Protection Agency to avoid interrogation and potential arrest by the Corruption Eradication Commission (Rayda 2010).

both agents higher up, and to parliaments situated in the same tier of government. However, horizontal accountability has greatly declined in the last few years in both national and sub-national politics. While legislators at both levels have become more assertive in criticising the executive branch of government since the demise of the New Order (as exemplified by the parliamentary inquiry into the Bank Century case) (Baird and Wihardja 2010: 144–6), the parliaments still lack a convincing track record of effectively monitoring the administration. At the national level, with very little real opposition in place, a party cartel – often referred to rather euphemistically as the ‘rainbow coalition’ (Diamond 2009; Sherlock 2009) – shapes the relationships between the executive and the legislature (Slater 2004).

At the sub-national level, the political influence of the executive has increased considerably since 2005, when new regulations and laws were implemented which cut back the oversight functions of the local legislature (Aspinall 2006: 194). In particular, Law 32/2004 on Regional Government stripped local parliaments of their right to impeach heads of local government, appoint regional secretaries, and screen election candidates running for district head or mayor. The law was also modified to abolish the right of local parliaments to demand accountability reports from local heads of government, apparently because legislators had abused this legislative review process to extort bribes from government officials. At the same time, executive and bureaucratic powers in budget and regulatory matters related to the delivery of public services were strengthened. Law 32/2004 on Regional Government expanded the fiscal authority of local government heads, who are now empowered to control the financial management of their respective territories, authorise expenditure and set priorities, as well as to decide on the level of budget spending (art. 156). While theoretically budgets need to be approved by local parliaments (art. 181), evidence suggests that parliamentary participation in the budget process has been limited and fraught with problems. Law 32/2004 also increased the power of local heads of government by allowing them, as well as the local assembly, to issue regulations (art. 140). Recent experience shows that local parliaments rarely initiate the introduction of such regulations, and local government heads dominate this process (Ibrahim, Sirajuddin and Sholahuddin 2009: 1–42). Finally, Law 32/2004 allows district heads and mayors to intervene directly in the work of the legislature. For example, the appointment and control of civil servants in the local parliament secretariat now fall under the authority of the district head or mayor. This change has reduced the autonomy of sub-national parliaments and weakened their ability to scrutinise executive heads, since the secretariat is the body that usually prepares the material for legislators to use in holding local executive heads accountable.

With the legislative branch weakened, Law 25/2009 will probably increase vertical accountability only, making sub-national executive heads more accountable to officials higher up. This is at odds with the devolution of power since 1998, and is therefore a potential source of conflict between the tiers of government, as mentioned above. Such vertical tensions could be exacerbated if Indonesia follows international practice in the evaluation of public service delivery, given that this most often relies on ‘self-assessment’ mechanisms, including rating systems, customer satisfaction surveys and benchmark comparisons, in which the central government is usually heavily involved (DILG 2000; DILG 2002; Ferrazzi 2005: 229).

Enforcing sanctions

Enforcement of the sanctions contained in the law implicitly takes for granted the power of senior bureaucrats within the state apparatus. This may not accurately reflect the power dynamics within Indonesian public service providers. Examining power relations within the bureaucracy more than three decades ago, one observer noted:

In their routine efforts to gather information, implement decisions, and mobilize employees, superiors were faced with the fact that they often did not have sufficient authority to do these things ... [Civil servants often argued] to outsiders, and to themselves, that because government salaries were so low, superiors did not have a right to demand more than a minimum of obedience from them ... It was recognized at the top, just as it was widely claimed at the bottom, that the government did not have the right to demand more than semi-obedience and half-effort ... On paper, Indonesian superiors ... had the power to act against transgressors and to require subordinates to work every hour of each day, but it was recognized by everyone that what was written down was not conceded in fact, and that it would be futile to act as if it were. The natural response of employees who suffered cuts in honoraria or incentive money was to work less ... The incapacity, or extreme reluctance, of superiors to punish transgressions occurring at others' or even their own expense permitted a chronic crisis of authority to infect every pore of the government bureaucracy. The result was to work at a snail's pace or, commonly, not to work at all (Conkling 1979: 443–550).

More recently, McLeod (2010) has argued that officials at higher levels are likely to be involved in corruption in order to supplement their own meagre salaries, which are low relative to those in the private sector. They therefore have strong incentives to encourage subordinates to participate in the systemic corruption characteristic of Indonesia's public sector. In this way they protect themselves against potential whistle-blowers. Weak authority among superiors is likely to persist despite the nominal availability of formal means of punishment, as civil servants will continue to seek refuge in the rhetoric of insubordination because of low pay. A foreign governance specialist predicted that bureaucrats will probably continue to deliver services in the same manner, perfectly aware that most of the sanctions put forward will not be imposed by their superiors (Ferrazzi, pers. comm., 8 March 2010). It is unclear how the law can provide an impetus for changing the mindset of civil servants while official salaries remain below those of the private sector, since punitive measures cannot realistically be enforced.

Budgetary constraints

The Law on Public Services is also unrealistic in relation to the fiscal context in which these services are delivered. Public services are supplied either free of charge or at significantly below their cost of production. This necessarily implies a call on the budget, because consumers pay less than the unit production cost. Thus the quantity and quality of such services is determined through the political mechanism rather than by balancing their value to consumers against their cost. Although there may be strong political support for the provision of state-subsidised services such as education and health, there is also a reluctance to pay the taxes needed to finance them. Typically, demand will exceed supply, because

funding will be inadequate. Responding to excess demand by raising the price of the service is not an option for state-owned utilities and other service providers. On the contrary, faced with a fixed budget, such agencies have little scope for expanding their output or improving the quality of their service. Although Law 25/2009 is premised on the belief that it will be effective in forcing public service providers to increase the quantity and/or quality of services, logic suggests otherwise. Without the necessary funds, this is an impossibility (except to the limited extent permitted by increasing operational efficiency).

Also impractical is the call for the punishment of officials who commit 'transgressions' in matters that are clearly beyond their control. For example, failure to provide adequate infrastructure for service delivery can be penalised by a salary reduction for up to one year, equal to the annual salary increase (art. 54, clause 5). Failure to provide adequate funds for public service delivery will lead to a written warning. Failure to rectify funding issues within a year will lead to loss of managerial rank (art. 33, clause 2; art. 54, clause 3). Likewise, officials who fail to provide budgetary funds for compensation payments will be penalised by the loss of their managerial rank (art. 50, clause 4; art. 54, clause 7). Yet in each of these three cases, officials in public service providers are legally obliged to make do with budget allocations determined by others. It is absurd to penalise them if the funds available are insufficient to meet specified service delivery standards. They will always be able to argue that shortcomings in service delivery are the consequence of insufficient funding rather than incompetence or negligence.

Structural control measures and their enforcement

Expanding role of the Ombudsman

The law introduces control measures that are structural rather than organisational in scope by expanding the role of watchdog organisations (quadrant 3 of table 1). Most important among these provisions are the greater responsibilities given to the Ombudsman and the introduction of citizen committees. Again, the challenges to successful implementation of these measures are considerable.

First, the law is inconsistent in relation to the establishment of regional branch offices of the Ombudsman. It is not clear whether the creation of such branches is mandatory, or at which levels of government ('regions') they should be established.¹⁶ Second, branches would be responsible only for complaints about national providers operating at the sub-national (local) level. They have no mandate for handling complaints concerning local providers. Local offices of the Ombudsman would therefore still be needed to establish an avenue for complaints about service delivery by local governments, which are responsible for the bulk of public services in Indonesia. However, neither the Law on Public Services nor the Law on the Ombudsman requires that local offices be established.¹⁷ Third, the Ombudsman can only *recommend* sanctions for public service providers and those individual officers it deems negligent in complying with delivery standards and the requirements of the law. Gayus Lumbuun, a member of the national

16 The word 'region' is not defined in the law. In the Indonesian context it is often used collectively to refer to provinces, districts and municipalities.

17 Yogyakarta province and the district of Asahan in North Sumatra province are two of the few sub-national governments that have established local offices of the Ombudsman.

parliament's Commission III for Legal Affairs and Human Rights in 2008, aptly described the dependence of the Ombudsman on the cooperation of public service providers and enforcement agencies in responding to its recommendations:

It is the [Ombudsman]'s job to accommodate people's complaints and make recommendations to sanction guilty officers. We hope all state institutions will be committed to enforcing the recommendations. In fact, the Ombudsman Law indirectly requires commitment from these institutions (Maulia 2008).

Crouch (2008: 397) believes that, with regard to *specific* grievances, 'the moral weight of [the Ombudsman's] conclusion ... is often sufficient to influence good governance change', but argues that the Ombudsman is less effective in addressing *systemic* failures [emphasis added]. The slow manner in which the notoriously corrupt Supreme Court has responded (if at all) to recommendations made by the Ombudsman (*Jakarta Post*, 9 January 2009) exemplifies the lack of commitment of many public service providers.

In short, the emphasis placed on the Ombudsman conceals the fact that enforcement of its recommendations relies entirely on other government agencies. The past decade has shown that the majority of power abuse by public officials continues to go unpunished, indicating a weak commitment by enforcement agencies in reacting to complaints forwarded by the Ombudsman.

Establishing citizen committees

The enforcement of stipulations that demand a stronger role for the public in relation to monitoring service delivery faces similar challenges. The law is silent about compensation for those who participate in monitoring public service delivery through these committees, so it is unclear what incentive individuals will have to join them. Those most likely to do so are Indonesians on the payroll of civil society organisations and, directly or indirectly, the foreign development assistance industry.¹⁸ While civil society organisations have certainly become more vocal since the demise of the New Order in 1998 (Setiyono and McLeod 2010), they remain weak and fragmented, and have arguably failed to bring about significant political reforms during the last decade. Their lack of success is due to a combination of low organisational capacity in non-governmental groups and a lack of horizontal links within civil society (Andriyani 1996); to an electoral framework that deliberately creates high entry costs for political participation (Boudreau 2009); and to the peculiarities of clientelistic politics that have often allowed political elites to co-opt civil society (Holloway 2001).

Strengthening political control

Against this backdrop of low bureaucratic capacity, a disinclination to enforce rules and restraints (quadrant 1 of table 1) and the dependency of watchdog organisations (lower part of quadrant 3 of table 1) on inefficient and corruption-ridden law enforcement agencies, political control (upper part of quadrant 3 of table 1) is the only remaining avenue with the potential to enforce the punitive

18 The latest available data from 2002 show that of the 13,500 civil society organisations that were registered with the government, 90% received foreign funding (O'Rourke 2008).

measures stipulated in the law. Historically, it has most often been political elites that initiated and oversaw successful civil service reform. In 19th century Britain, reforming the bureaucratic apparatus became a priority of the ruling elite, in the context of socio-economic changes that created new political players who challenged established political interests.

The transformations to the class system stemming from the collapse of agricultural land values and the emergence of a new and self-made bourgeoisie led the old aristocracy to make major concessions to avoid the *déluge* precipitated by the failure of their counterparts in France and elsewhere to make similar concessions (Harris 2003: 213).

In the United States, civil service reform was successful only after it received the endorsement of ruling political elites. The municipal reform movement against political machines at the end of the 19th century, for example, was spearheaded by

white Anglo-Saxon Protestant middle-class businesspeople and civic leaders. The reformers tended to be old-stock Americans who were moved ... by fear and resentment of recent immigrants (Berman 2000: 258).

Likewise, efforts to stop the expansion of the Cosa Nostra within the Italian state became more successful after counter-elites emerged during the modernisation of Sicily after World War II. This process

brought with it an expanding urban and educated middle class, some constituencies of which have supported an anti-mafia social movement, a revitalized police-judicial campaign against organized crime, and a reform government in Palermo, the regional capital. [T]he leaders of these developments are engaged in a serious effort to change how ordinary people think about and relate to the mafia (Schneider and Schneider 2003: 290).

The pattern can also be found in Southeast Asia. The importance of inter-elite rifts for initiating bureaucratic reform has been shown for Vietnam (Gainsborough 2002: 705), the Philippines (Boudreau 2009: 237), and most recently Indonesia. Of the latter, Crouch (2010: 11) says:

Post-crisis reform [in Indonesia] did not follow a standard 'democratic template' in which freely elected legislators responded to popular pressures and bureaucrats implemented the principles of 'good governance' in pursuit of a perception of the long-term 'national interest'. Rather it was the product of protracted bargaining between largely self-serving parties, both old and new.

Such inter-elite competition has fluctuated greatly over the last decade, being most intense in the immediate aftermath of Soeharto's demise. During this time fundamental reforms were adopted, including far-reaching electoral and constitutional changes and the devolution of political power to regional governments. But inter-elite competition has steadily diminished as democracy has consolidated (Aspinall 2010). While Indonesia now has genuinely competitive elections, it does not necessarily have competitive elites (Slater 2006: 209). Thus a cartel-like party system ensures cosy relationships among members of the national political

establishment (Diamond 2009). In sub-national politics, genuinely new forces have failed in their attempts to enter politics (Hadiz 2010), as an analysis of the socio-economic background of candidates in the gubernatorial elections between 2005 and 2008 shows (Buehler 2010b). The Prosperous Justice Party (Partai Keadilan Sejahtera, PKS) was the only political movement of the post-New Order era that offered Indonesian voters an alternative to the existing political establishment. Its members differed from those of other parties in their socio-economic background and the kind of milieu in which they were rooted. PKS has since been drawn into the web of money politics and rent-seeking (Shihab and Nugroho 2008). This has led to the assimilation of a party that for some time seemed likely to become the nucleus of a genuine political opposition.¹⁹ The current political climate paralyses the inter-elite competition that is potentially conducive to administrative reform. With elite frictions being largely absent, pressure on politicians to embrace and enforce bureaucratic reform is minimal.

CONCLUSION

The Law on Public Services was adopted to improve bureaucratic accountability and thus increase the leverage of society over the state. It makes the definition of service standards mandatory, establishes monitoring and evaluation mechanisms, and outlines sanctions for sub-standard service delivery. At the same time, it aims to restructure the broader environment in which the bureaucracy is embedded, by expanding the responsibilities of the Ombudsman and introducing citizen committees. In emphasising restraints and control measures, it complements other civil service reform initiatives adopted in Indonesia in the last 10 years, most of which focus on punitive measures as the key to improving public sector performance.

Enforcement is the Achilles heel of administrative reform initiatives that centre on 'control'. It has been argued here that enforcement of the restraints and rules outlined in the law is beyond the current capacity of Indonesia's political and legal system. Bureaucratic inexperience in citizen-driven service standard formulation, tensions between different levels of government and endemic corruption within enforcement agencies obstruct the implementation of organisational restraint measures. For similar reasons it will be difficult to enforce control measures within the broader environment that are aimed at improving accountability. Complaints mechanisms rely heavily on the office of the Ombudsman, which, with its limited scope and its powers that do not go beyond reprimands, has struggled to make itself meaningful in the new political landscape. The law's lack of realism in relation to these difficulties is evident in its failure to account for the budget constraints faced by public service providers. If the funds allocated are inadequate, even the most efficient, honest and hard-working civil servants cannot deliver services of the desired quality and in the volumes promised to the public.

Genuine inter-elite competition – a catalyst for civil service reform in many countries in different periods – was lacking in Indonesia at the time of writing.

¹⁹ The parallels to the fate of the radical socialist parties in Europe are obvious. See, for example, Przeworski's lament about the 'embourgeoisement of the socialist movement' after left-wing groups had started to participate in elections (1980: 29).

The last decade has seen the rise of a cartel of parties and the failure of truly new forces to enter the political arena. While elites deemed political and administrative reform a necessity for their survival or advancement in the aftermath of the fall of Soeharto, a post-New Order equilibrium has already been established in which there is little impetus for further reform. Accordingly, recent 'reform' initiatives seem intended merely to provide a smokescreen for a lack of substantive action. In short, while the reform aims of the public service law are laudable, its successful implementation is open to serious doubt.

The mismatch between the systemic capacities required by Law 25/2009 and those available is not without consequences. Most immediately, it is predictable that the law will simply not be very effective, if it is effective at all. Like many other reform initiatives of the past decade, this law seems likely to become another symbol of the claimed 'reforming spirit' of the SBY administration, without actually producing tangible results for citizens. In a more pessimistic scenario, the law will actually hamper bureaucratic effectiveness. Reform initiatives aimed simply at suppressing certain actions, without providing rewards for changing behaviour, have often resulted in civil servants slowing down the release of funds for public service delivery, out of a fear of being wrongly accused of corrupt behaviour (Anechiarico and Jacobs 1996).

The difficulties surrounding the meaningful implementation of this law strongly suggest that the power balance in state–society relations cannot be tilted in favour of society simply by crafting legal documents that assign a nominally prominent role to the public. Even if society were to involve itself actively in the standard-setting and monitoring functions given to it by the new law, the state is unlikely to be able to deliver. Ironically, in order for society to gain greater leverage in politics, state capacity must increase as well.

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