



Maladministration Law Enforcement: The Authority of the Ombudsman in a Fair Public Service Dispute Resolution Mechanism

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ABSTRACT

Maladministration law enforcement is a crucial issue in realizing excellent public services. The Ombudsman, as an independent institution, plays an important role in resolving public service disputes efficiently and fairly. Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia in Article 26 Paragraph (2) point a triggers a vague norm that illustrates that the Ombudsman is not based on definite considerations and can be measured based on the theory of legal certainty. So that this will trigger articles that have the potential to abuse authority in the organ of the Ombudsman of the Republic of Indonesia (ORI). This type of research is normative juridical with a statutory approach and a concept approach, resulting in the fact that the Ombudsman of the Republic of Indonesia (ORI) has broad authority in handling public service disputes, including in cases of maladministration. Namely those that are not in accordance with the principles of good governance, including abuse of authority, negligence, discrimination, delay, and other actions that can harm the community. Law enforcement against maladministration can be carried out if there is legal certainty in determining the status of examinations that can be continued or not based on the concept of good governance so as to create justice.

INTRODUCTION

The Ombudsman of the Republic of Indonesia (ORI) is a state institution that has the authority to oversee the implementation of public services, including those organized by State-Owned Enterprises, Regional-Owned Enterprises, and private entities or individuals tasked with carrying out certain public services. In this regard, Article 34 Paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 states expressly that the state is fully responsible for the provision of health service facilities and good public service facilities, this is said to reflect the ideals and hopes of the Indonesian nation to obtain its constitutional rights in public services to meet the basic needs of every citizen and resident of Indonesia. The Ombudsman of the Republic of Indonesia (ORI) has been given attributive authority by the constitution and has also been mandated in Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, which confirms that the Ombudsman of the Republic of Indonesia is an independent state institution and does not have organic relations with state institutions and other government agencies (Pemerintah Republik Indonesia, 2008). In carrying out its duties, the Ombudsman of the Republic of Indonesia (ORI) has another role to succeed the National Law Development, as well as several Ombudsman activities that have been carried out related to the prevention of maladministration and the completion of community reports (Rus'an Yasin, Akbar, & Hasmin, 2021). However, the authority of the Ombudsman of the Republic of Indonesia (ORI) is still considered weak, because the Ombudsman of the Republic of Indonesia (ORI) only has the authority to supervise, but does not have coercive power over the intended institution, so the recommendations issued by the Ombudsman of the Republic of Indonesia (ORI) do not have legal certainty and legal force.

The ombudsman is not only found in Indonesia, but the ombudsman is also an institution in the implementation of its function to supervise public services. This is acceptable in countries that are considered independent institutions to provide a sense of security to any whistleblower for institutions suspected of maladministration practices because in the process of handling reports the ombudsman holds the principle of universal ombudsman (Sebayang, 2021). These principles are fundamental principles that ensure the effectiveness and credibility of the Ombudsman institution in carrying out its duties. Must be free from the influence of any party, whether government, private

institutions, or certain political interests. This independence is important to ensure objectivity and neutrality in handling community reports. Quoted from Hartono's opinion, maladministration is defined as a form of agency behavior in state administrative law that is detected as unnatural, namely actions that lack concern for problems that are the scope of handling the institution caused by arbitrary abuse of power with unjust, intimidative or discriminatory actions (F. A. Putri & Adnan, 2020).

The Ombudsman institution until now is designed to be applied to legal systems with different politics, including in Indonesia which currently has an Ombudsman institution but adaptability is needed so as not to result in some trade-offs that can sacrifice the conceptual clarity of some principles (Glušac, 2021). This is because the basic principles underlying the Ombudsman are universal and can be adapted to each country's local context. This includes adjusting the organisational structure, authority, and working mechanisms of the Ombudsman to suit the local legal system and culture.

The role of the Ombudsman of the Republic of Indonesia (ORI) is expected to improve and improve the performance of government administration, encourage more open government, and assist the public in solving administrative problems (Lubis, Kusumasari, & Hakim, 2018). In carrying out its duties, the Indonesian Ombudsman faces many challenges, such as government officials who still question the obligation to implement the recommendations issued by the Indonesian Ombudsman. In recent years, there have been illegal levies occurring in public services, so the author is interested in discussing the role of the Ombudsman in eradicating these illegal levies. The Ombudsman is one of the Sapu Bersih Pungutan Liar (SABERPUNGLI) teams regulated in Presidential Regulation Number 87 of 2016. Thus, the authority of the Ombudsman of the Republic of Indonesia still needs to be strengthened, so that the Ombudsman of the Republic of Indonesia (ORI) can be more effective in carrying out its duties as a supervisor of public services.

The reason why the implementation of public services needs to be monitored and supervised is because to guarantee the rights of citizens to get equal, balanced, fair, and professional public services, the need for supervisory institutions for the implementation of public services is the responsibility of the state and government to achieve prosperity. This is also based on Article 3 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia in one of the duties and authorities of the

Ombudsman is to carry out an impartial and non-discriminatory balance. Access to public services must be made openly based on the principles of openness and confidentiality in the concept of good governance where in Article 4 of Law Number 25 of 2009 concerning Public Services, the principle of public administration is carried out based on public interest and legal certainty (Pemerintah Republik Indonesia, 2009; Pratiwie, 2017).

METHOD

The type of research used by the author in this scientific paper uses a type of normative legal research that focuses on analyzing legal norms with the discovery of vague norms in Article 26 Paragraph 2 Letter a of Law Number 37 of 2008 concerning the Ombudsman with a statutory approach or statute approach and a conceptual approach or conceptual approach. These two approaches are considered relevant to the problem and also the legal issues that arise in this problem, namely because of the need for the principle or concept of good governance in resolving the existence of vague norms that cause legal uncertainty which in this case uses the theory of legal certainty to be able to realize legal goals. The technique of collecting and processing legal materials is carried out through literature studies or library research by conducting in-depth analysis from general to special or deductive which is analyzed based on grammatical interpretation.

RESULTS AND DISCUSSION

A. The Ombudsman as an independent institution conducts law enforcement of public service maladministration

The role of the Ombudsman is not well known by many people, especially in terms of resolving disputes that occur within the scope of handling the Ombudsman as an independent institution that handles public service problems, especially administrative issues (Gadlin, 2007). Alternative dispute resolution in public service problems has an important role in resolving conflicts and problems that arise in public services. In this context, the Ombudsman of the Republic of Indonesia (ORI) has a role as an alternative dispute resolution institution that functions as a supervisor of public services and alternative dispute resolver. The Ombudsman of the Republic of Indonesia (ORI) serves as a channel for the community to channel the public service problems they encounter so that the report can be submitted to the relevant agencies to be solved. In recent years, there have been illegal levies that have

occurred in public services, so alternative dispute resolutions such as the Indonesian Ombudsman include one of the Sapu Bersih Pungutan Liar (SABERPUNGLI) teams regulated in Presidential Regulation Number 87 of 2016 (Salipu, 2023).

As a supervisory institution for public services, it must also be supported by digital transformation, this is related to supporting the significance of the quality of ombudsman services in providing services in e-government, this can be used in accordance with the needs of related agencies in the management dimension in conducting supervision and even for resolving public service disputes (Bakti, 2020). E-government can increase transparency by providing easily accessible information on public service procedures, requirements, and fees. In addition, e-government can increase the accountability of public service providers. With regard to the provision of data-based and digital-based public information, as happened during the Covid-19 pandemic, the Ombudsman in carrying out his duties is limited (Salminen & Farzamfar, 2022). So that adjustment to unexpected conditions requires the readiness of the government a set of supporting instruments both physical and non-physical. In this case, the non-physical in question is a regulation that is able to accommodate all mapping of public service supervision that has the potential for maladministration. Ombudsman in the perspective of big data as input in development planning related to public service supervision utilizes Intelligence Media Analytics developed by Bappenas. Problems related to social aid programs became the most reported public complaints to the Indonesian Ombudsman during the Covid-19 period (Pambudi, Putri, & Agnelia, 2022).

Alternative dispute resolution such as the Indonesian Ombudsman has advantages in resolving disputes that cannot be resolved through the litigation process, such as disputes that according to laws and regulations cannot be held peacefully (As'adi, 2016). In addition, alternative dispute resolution can also be done by other means, such as arbitration, which is a dispute resolution method carried out with the help of neutral third parties. In recent years, there have been illegal levies that have occurred in public services, hence alternative dispute resolutions such as the Ombudsman of the Republic of Indonesia The Ombudsman of the Republic of Indonesia (ORI) including one of the Sapu Bersih Pungutan Liar (SABERPUNGLI) teams regulated in Presidential Regulation Number 87 of 2016 (Peso & Pranoto, 2022). Thus, the authority of the Ombudsman of the Republic of Indonesia still needs

to be strengthened, so that the Ombudsman of the Republic of Indonesia can be more effective in carrying out its duties as a supervisor of public services and alternative dispute resolution.

Maladministration law enforcement in the Ombudsman of the Republic of Indonesia The Ombudsman of the Republic of Indonesia (ORI) has an important role in ensuring transparent, accountable, and sustainable public services (Peso & Pranoto, 2022). Maladministration can be defined as behavior or acts against the law and ethics in the process of public service administration. In this context, the Ombudsman of the Republic of Indonesia (ORI) has the authority to oversee the delivery of public services and resolve community reports related to maladministration (Zsa Zsa Bangun Pratama, 2021).

The Ombudsman of the Republic of Indonesia (ORI) serves as an independent supervisor of public services and has no organic relationship with state institutions and other government agencies (Faatihah & Utomo, 2022). In carrying out its duties, the Ombudsman of the Republic of Indonesia (ORI) has another role to succeed the Ombudsman of the Republic of Indonesia (ORI) for National Law Development, as well as several activities of the Ombudsman of the Republic of Indonesia (ORI) that have been carried out related to the prevention of maladministration and the completion of community reports.

The success of law enforcement in principle is seen in a barometer of legal legitimacy that can reach the social reality of society because laws are made to be implemented and cannot be separated from society so that the work of law must be community-based and the integrity of the nation's ideals (Aaron Alekxander, 2023). Public service maladministration disputes that can be held to the Ombudsman of the Republic of Indonesia The Ombudsman of the Republic of Indonesia (ORI) can be in the form of:

- a. Use of Illegal Levies: Cases of illegal levies carried out by public service providers, such as fees that are not in accordance with laws and regulations, can be submitted to the Indonesian Ombudsman for resolution.
- b. Delay in Service: Cases of delay in service carried out by public service providers, such as delays in sending documents or delays in processing complaints, can be held to the Indonesian Ombudsman for resolution.
- c. Improper Service Delivery: Cases of service delivery that are not in accordance with laws and regulations, such as services that are not

transparent or unaccountable, may be held to the Indonesian Ombudsman for resolution.

- d. Provision of Services that Ignore Community Rights: Cases of service delivery that ignore community rights, such as services that do not pay attention to the interests of the community, can be submitted to the Indonesian Ombudsman for resolution.
- e. Service Delivery that Ignores Government Policy: Cases of service delivery that ignore government policy, such as services that are not in accordance with government policy, can be submitted to the Indonesian Ombudsman for resolution.
- f. Service Delivery that Ignores Laws and Regulations: Cases of service delivery that ignore laws and regulations, such as services that are not in accordance with laws and regulations, can be submitted to the Indonesian Ombudsman for resolution.
- g. Service Delivery that Ignores National Policy: Cases of service delivery that ignore national policy, such as services that are not in accordance with national policy, may be held to the Indonesian Ombudsman for resolution.
- h. Service Delivery that Ignores Basic Rights: Cases of service delivery that ignore basic rights, such as services that do not pay attention to the basic rights of the community, may be referred to the Indonesian Ombudsman for settlement.
- i. Service Delivery that Ignores International Policy: Cases of service delivery that ignore international policies, such as services that are not in accordance with international policies, can be brought to the Indonesian Ombudsman for resolution.
- j. Service Delivery that Ignores Regional Policies: Cases of service delivery that ignore regional policies, such as services that are not in accordance with regional policies, can be submitted to the Indonesian Ombudsman for resolution.

Illegal levies that occur in public services trigger many reports to the Ombudsman of the Republic of Indonesia (ORI), so alternative dispute resolutions such as the Indonesian Ombudsman include one of the Sapu Bersih Pungutan Liar (SABERPUNGLI) teams regulated in Presidential Regulation Number 87 of 2016 (Republik Indonesia, 2016). Thus, the authority of the Ombudsman of the Republic of Indonesia still needs to be strengthened, so that the Ombudsman of the Republic of Indonesia can be more effective in carrying out its duties as a

supervisor of public services and alternative dispute resolution.

Based on the Ombudsman Regulation of the Republic of Indonesia Number 41 of 2019 concerning Procedures for Preventing Maladministration in the Implementation of Public Services, prevention of maladministration is a process, method, or action carried out by the Ombudsman of the Republic of Indonesia actively through detection, analysis, and treatment of the implementation of suggestions so that maladministration does not occur or recur (Ombudsman Republik Indonesia, 2019). Then further elaborated on the understanding: (a) Detection is an inventory, identification, and updating of Public Service problems in determining the occurrence of potential maladministration; (b) Analysis is a series of data collection, review, and suggestion formulation activities; (c) Advice Implementation Treatment is a series of activities in order to convey and ensure that the Ombudsman's advice is implemented by relevant stakeholders.

Local political conditions also stimulate high and low reports to the Ombudsman which can upset the balance between *das sollen* and *das sein*. This is done not only refers to the number of violations, the number of maladministrations, the number of abuses of authority, and various kinds of crimes in the field of state administration that encourage the public to exercise or even not exercise their rights to be able to report to the Ombudsman as a supervisory institution and dispute resolution of Public Administration. This is no longer a policy but a consideration of the model of community action taking as a form of reaction to the rules or policies made (Antônio F. Tavares, Sara Moreno Pires, 2022).

B. Authority of the Ombudsman to Conduct Fair Dispute Resolution of Public Service Maladministration

The authority of the Ombudsman of the Republic of Indonesia (ORI) in resolving disputes over maladministration of fair public services has an important role in ensuring transparent, accountable, and sustainable public services. Maladministration can be defined as behavior or acts against the law and ethics in the process of public service administration (F. A. Putri & Adnan, 2020). The Ombudsman of the Republic of Indonesia (ORI) has the authority to process or resolve public service disputes either from community reports or initiatives from the Ombudsman. In carrying out its duties, the Ombudsman of the Republic of Indonesia (ORI) has several authorities stipulated in Law Number 25 of 2009 concerning Public Services, such as receiving

and being authorized to process complaints from the public regarding the implementation of public services, resolving community complaints if the complainant wants the resolution of complaints not to be carried out by the organizer, and forming representatives in hierarchical regions to support duties and functions Ombudsman in public service activities. The Ombudsman of the Republic of Indonesia (ORI) completes reports of people experiencing maladministration of public services through several integrated and systematic stages (Sebayang, 2021). The following are the steps taken by the Ombudsman of the Republic based on Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia in completing reports of people experiencing maladministration of public services:

- a. Report Acceptance: The Ombudsman of the Republic of Indonesia (ORI) receives reports from communities experiencing public service maladministration.
- b. Report Examination: The Assistant Ombudsman conducts substance checks on reports received, including conducting self-initiated investigations into allegations of maladministration in the delivery of public services.
- c. Report Follow-up: The Ombudsman of the Republic of Indonesia (ORI) follows up on reports that fall within the scope of the Ombudsman's authority, including making efforts to prevent maladministration in the delivery of public services.
- d. Development of Resolution Strategies: The Ombudsman of the Republic of Indonesia (ORI) develops resolution strategies that are in accordance with the case at hand, including collaborating with public service providers both at the Center and at the Representative.
- e. Report Completion: The Ombudsman of the Republic of Indonesia (ORI) completes the reports received, including resolving public service disputes that have legal force only as recommendations.
- f. Supervision and Evaluation: The Ombudsman of the Republic of Indonesia (ORI) supervises and evaluates the implementation of report completion, including carrying out Maladministration Prevention and Quality Assurance activities.

The adjudication authority of the Ombudsman of the Republic of Indonesia (ORI) is one of the important authorities it has in order to oversee the implementation of public services. This authority allows the Ombudsman of the Republic of Indonesia

(ORI) to resolve public service disputes between whistleblowers and public service providers definitively and bindingly as stipulated in Article 50 of Law Number 25 of 2009 concerning Public Services (Pemerintah Republik Indonesia, 2009; Zsa Zsa Bangun Pratama, 2021). The resolution of public service disputes through the adjudication process conducted by the Ombudsman is only one of several possibilities for the imposition of administrative sanctions on those who ignore the Ombudsman's recommendations (Setiawan Aji & Cahyaningtyas, 2021). This is in line with the rules contained in Article 7 letter g of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia which definitively authorizes the Ombudsman of the Republic of Indonesia (ORI) in carrying out supervision of public services from maladministration practices (Pemerintah Republik Indonesia, 2008). And the most important thing about the existence of a decision in alternative dispute resolution including in maladministration disputes is the implementation of the decision or execution of the decision of the Indonesian Ombudsman as an institution that has the authority to handle public service dispute cases (Siregar, 2021). Article 26 Paragraph (2) letter a of Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia contains a vague norm stating that the ombudsman institution is not authorized to continue the examination or authorized to continue the examination of reports. Where in this case the ombudsman institution is substantively considered to have no independence and authorization in resolving public service disputes that must be resolved at the ombudsman level which in fact already has full authority based on attributive authority in Article 2 of Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. So that law enforcement cannot be fully carried out in a *das sollen* manner based on normative reality (S. P. Putri, 2023).

Fair public services are carried out using the concept of good governance. The development and improvement of public service delivery is contained in the concept of good governance which aims at good governance to prevent legislative gaps, corruption prevention, maladministration and fragmentation of administrative law norms (Faatihah & Utomo, 2022). In addition, the concept of good governance is also used in strategizing authority and power in fulfilling norms developed by supervisory institutions, in this case it is a general or administrative ombudsman who can make more

interactions between these powers and authorities in the development of good governance principles so that they can balance between these principles and can be applied to good governance (Addink, 2019).

Settlement of public service disputes based on Law Number 25 of 2009 concerning Public Services which can be carried out by the ombudsman as a supervisory institution for the implementation of public services that cause disputes and conflicts can be resolved in two ways, namely can be resolved by alternative settlement through settlement of compensation in public service disputes and settlement through litigation in court (Bimasakti, 2021).

The weakness of the adjudication process is only a recommendation for self-correction (Meitasari, Hadiyantina, & Dwi Qurbani, 2020). Because based on Article 2 of the Ombudsman Regulation of the Republic of Indonesia Number 41 of 2019 concerning Procedures for Preventing Mal Administration for Public Service Delivery, the prevention of maladministration is carried out in three stages, namely detection, analysis, and treatment of the implementation of advice (Ombudsman Republik Indonesia, 2019). Sanctions against reported institutions cannot be carried out, but can recommend that institutions make self-corrections because the nature of the ombudsman's recommendations is not binding and cannot be forced to be implemented (Devi, Adiyanta, & Sa'adah, 2019). And this has no consequences that can provide legal certainty so substantially to resolve public service disputes alternatively is only a recommendation.

CONCLUSION

Based on the results of the research discussed above, the author concludes the findings in this study, namely the authority of the Ombudsman institution in resolving public service disputes, namely the existence of maladministration practices does not provide legal certainty. Because, in the enforcement of maladministration law in the settlement of public service disputes in Article 26 Paragraph (2) letter a of Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, there is a vague norm stating that the ombudsman institution is not authorized to continue the examination or authorized to continue the examination of reports. Where in this case the ombudsman institution is substantively considered to have no independence and authorization in resolving public service disputes that must be resolved at the ombudsman level which

in fact already has full authority based on attributive authority in Article 2 of Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. So that law enforcement cannot be fully implemented in a *das sollen* manner based on normative reality. The mechanism for resolving fair public service disputes also synergizes with the concept of Good Governance which can ensure public trust in the government and public service providers. So that Good Governance is a fundamental foundation in realizing quality and community-oriented public services to realize justice.

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