

IMPLEMENTATION OF THE AUTHORITY OF THE INDONESIAN OMBUDSMAN REPRESENTATIVE OF THE PROVINCE OF NUSA WEST SOUTHEAST IN OVERSIGHT OF PUBLIC SERVICES IN THE VILLAGE

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ABSTRACT

The Ombudsman is an institution established to deal with abuse of power by government officials and to assist officials in carrying out government efficiently and fairly, as well as to encourage power holders to carry out their responsibilities and provide good service. The Ombudsman Representative for West Nusa Tenggara Province has a role in supervising public services in their working area. In following up on each report complained by the complainant, the Ombudsman will ensure whether the report falls under the authority of the Ombudsman or not. This study aims to see the effectiveness of the Ombudsman in supervising public services in the village. The research method is socio-legal. Socio-legal research represents an interface with a context within which law exists. In supervising public services, apart from receiving reports from the public, the Ombudsman can also carry out on his own initiative through a systemic review, the results of which can be in the form of recommendations/suggestions. To ensure compliance with efforts to resolve the Ombudsman by the Reported Party or the Reported Party's superiors, the Ombudsman conducts direct monitoring or through the media/publications and submits periodic and annual reports to the President of the Republic of Indonesia and the People's Representative Council.

Keywords: *Ombudsman; Public Service; Village*

A. INTRODUCTION

Montesquieu's Trias Politica theory, which only distinguished 3 (three) state powers, namely legislative, executive and judicial powers, originated in the 18th century, and is no longer sufficient for this century. Saldi Isra views that the need for state practice which continues to move according to the dynamics of the complexity of the problem requires the presence of new institutions.¹ In line with this, developed countries have thought about how to improve the protection of people's rights in order to obtain good and fair public services from state/government administrator.²

The Ombudsman is an institution established to deal with abuse of power by government officials and to assist officials in carrying out government efficiently and fairly, as well as to

¹ Saldi Isra dalam Kata Pengantar Zainal Arifin Mochtar. (2017), *Lembaga Negara Independen: Dinamika Perkembangan dan Urgensi Penataannya Kembali Pasca Amandemen Konstitusi*, Rajawali Press: Jakarta, p. 8.

² Ratna Sari Dewi Asisten Ombudsman RI Pusat "19 Tahun Ombudsman, Menuju Pelayanan Publik Prima", <https://news.detik.com/kolom/d-4463476/19-tahun-ombudsman-menuju-pelayanan-publik-prima>, accessed, March 1 2023.

encourage those in power to carry out their responsibilities and provide good service.³ state and government administrators in administering public services and law enforcement. The Ombudsman of the Republic of Indonesia handles public service complaints which in carrying out their duties and authorities are free from interference from other powers. Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia became the basis for the formation of the Ombudsman of the Republic of Indonesia, although during the reign of President Abdurrahman Wahid based on Presidential Decree Number 44 of 2000 a National Ombudsman Commission had been formed.

The Ombudsman institution is a new institution outside the legislature, executive and judiciary which universally has the following characteristics; Independent, carrying out the task of supervising maladministration actions that people complain about, for example the actions of state administration officials who deviate (deviate), strange and odd (inappropriate), arbitrary (abus de droit/ willekeur), abuse of authority (détournement de pouvoir) / abuse of power), violation of equity, violation of provisions (irregular/ illegal), undue delay, and others.⁴

According to Mediya Lukman, public service delivery institutions can be classified into 3 (three) forms, namely ordinary bureaucratic institutions with limited or no degrees of autonomy and independence, BLU/D as semi-autonomous institutions, and BUMN/D as public institutions. State which is truly autonomous in managing every resource and making decisions. 1 In further developments after the issuance of Law Number 24 of 2011 concerning the Social Security Organizing Agency, and Law Number 12 of 2012 concerning Higher Education, 1 (one) another form of public service delivery institution that has far greater autonomy and discretion than public institutions/organizations in the form of BLU, namely BPJS and PTN legal entities.⁵

In order to carry out decentralized supervision, on January 31, 2012 the Ombudsman of the Republic of Indonesia issued a Chairperson's Decree Ombudsman of the Republic of Indonesia Number 22/ORI-SK/I/2012 Concerning the Establishment of Representative Offices of the Ombudsman of the Republic of Indonesia in several Provinces. The province consists of the provinces of Aceh, Riau, South Sumatra, West Kalimantan, West Nusa Tenggara (NTB), Central Sulawesi, Southeast Sulawesi, Central Java and West Sumatra Province.

The Ombudsman Representative for West Nusa Tenggara Province has a role in supervising public services in their working area, namely all districts or cities in West Nusa Tenggara Province. In following up on every report filed by reporter, the Ombudsman will ensure whether the report becomes the authority of the Ombudsman or not. Seeing from the existence of community reports on public services in the village.

Based on the phenomena that have been described, the researcher tries to see the effectiveness of the Ombudsman in supervising public services in the village, therefore the authors feel interested in carrying out research with the theme "The Role of the Ombudsman of the Republic of Indonesia Representative of West Nusa Tenggara Province in Oversight of Public Services in the Village".

³ Bagir Manan dalam Kata Pengantar buku Taufiqukohman. (2015). *Optimalisasi Peningkatan Investigasi Ombudsman Republik Indonesia Guna Meningkatkan Kualitas Pelayanan Publik*, Penerbit Fakultas Ilmu Sosial dan Ilmu Politik Universitas Prof. Dr. Moestopo Beragama; Jakarta, p. 1.

⁴ Suharto, R.B. (2020). Strengthening the law in order to keep existence the unitary state of the republic of Indonesia. *International Journal of Law Reconstruction*, 4(1).

⁵ Mediya Lukman. (2013). *Badan Layanan Umum dari Birokrasi Menuju Korporasi*, Bumi Aksara: Jakarta, p. 5

B. RESEARCH METHOD

This research is directed to answer the problem formulation through socio-legal research. Socio-legal research represents an interface with a context where law exists. That is why when a socio-legal studies researcher uses social theory for analytical purposes, they are not aiming to pay attention to sociology or other social sciences, but law and legal studies.⁶ With this socio-legal research, it is hoped that the researcher will be able to describe the issues raised in a more in-depth and holistic manner. Because Socio-Legal research does not only focus on empirical research but combines both normative and empirical aspects.

C. DISCUSSION

1. Implementation of the Ombudsman's role as a supervisory body for the implementation of public services in supporting the realization of good governance

The Ombudsman is an institution established to deal with abuse of power by government officials and assist apparatuses to carry out government efficiently and fairly, as well as to encourage those in power to carry out their responsibilities and provide services in an efficient manner Good.⁷ The Ombudsman of the Republic of Indonesia is an external supervisory institution whose existence is expected to be able to control the duties of state administrators and government in administering public services and law enforcement. The Ombudsman of the Republic of Indonesia handles public service complaints which in carrying out their duties and authorities are free from interference from other powers.

In the dictionary written by Martin Basiang "The Contemporary Law Dictionary" the Ombudsman is defined as follows:⁸

An appointed official charged with investigating reports and complaints of malfeasance by government agencies or officials against private citizens.

Besides that, Rhode gave the definition of the Ombudsman as follows:⁹

"an office provided for by the constitution or by action of the legislature or parliament and headed by an independent high level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against Government agencies, officials, and employees, or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue report".

Rod Hague and Martin Harrop, memberikan definisi Ombudsman sebagai berikut: "... a public official who investigates allegations of maladministration in the public sector"¹⁰

The Ombudsman institution is a new institution outside the legislature, executive and judiciary which universally has the following characteristics; Independent, carrying out the task of supervising maladministration actions that people complain about, for example the actions of state administration officials who deviate (deviate), strange and odd (inappropriate), arbitrary (abus de droit/ willekeur), abuse of authority (détournement de pouvoir) / abuse of

⁶ Sulistyowati Irianto, Meretas Jalan Keadilan Bagi Kaum Terpinggirkan dan Perempuan (Suatu Tinjauan *Socio-Legal*). Pidato Pengukuhan Guru Besar Tetap dalam Ilmu Antropologi Hukum pada Fakultas Hukum Universitas Indonesia, 22 April 2019, p. 33.

⁷ Bagir Manan dalam Kata Pengantar buku Taufiqukohman. (2015). *Optimalisasi Peningkatan Investigasi Ombudsman Republik Indonesia Guna Meningkatkan Kualitas Pelayanan Publik*, Penerbit Fakultas Ilmu Sosial dan Ilmu Politik Universitas Prof. Dr. Moestopo Beragama; Jakarta, p. 1.

⁸ Martin Basiang. (2016). *The Contemporary Law Dictionary*, PT Gramedia Pustaka Utama: Jakarta, p. 358-359.

⁹ Rhode, dikutip dari A'an Efendi dan Freddy Poernomo, *op.cit.*, hlm 286. Lihat disertasi Yvonne Maria van der Vlugt, De Nationale ombudsman en behoorlijk politieoptrede, (de Universiteit Leiden, 2011), p. 21.

¹⁰ Rod Hague and Martin Harrop. (2001). *Comparative Government and Politics: An Introduction*, Palgrave, New York, p. 262.

power), violation of equity, violation of provisions (irregular/ illegitimate), undue delay, and others.

In this regard, of course, the Ombudsman system in general has advantages and disadvantages, especially regarding its work procedures which are not so formal in nature, do not include guarantees or strong authority, but on the other hand it shows a non-formalistic rigidity) and easier than a procedure in the world of justice. This makes it easier for the people to deal directly with the Ombudsman to submit their complaints.¹¹

As the needs and conditions developed, the powers of the Ombudsman RI grew wider and stronger, among others with the promulgation of Law Number 25 of 2009 concerning Public Services. In this regulation, the Ombudsman of the Republic of Indonesia is given wider authority including oversight of goods, services, and/or administrative services provided by public service providers. In connection with the settlement of compensation related to this matter, the Ombudsman of the Republic of Indonesia has the authority to carry out mediation, conciliation and special adjudication, especially in Article 50.¹² Meanwhile, Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 2 of 2015, also strengthens the authority of the Indonesian Ombudsman.

Based on Article 351 of this regulation it is stated that regional heads who do not carry out the recommendations of the RI Ombudsman supervisory agency as a continuation of public complaints can be given sanctions such as special guidance related to deepening the field of government by the Ministry of Home Affairs and the duties of the regional head and their authority are carried out by the deputy head, designated area or official.¹³

Literally Maladministration comes from the Latin “malum” (evil, bad, ugly) and “administrare” (taking care of or serving), Maladministration means bad and ugly service or management.¹⁴ The general view of maladministration can be interpreted as behavior or acts against the law and ethics in a public service administration process, which includes abuse of authority/position, negligence in actions and decision making, neglect of legal obligations, protracted delays, discriminatory actions, requests for compensation, and others that can be judged to be of the same quality as the error.¹⁵

Meanwhile, from the perspective of administrative science, administrative deviation or maladministration has the meaning (begrip), namely a practice that deviates from administrative ethics, or an administrative practice that keeps away from achieving administrative goals.¹⁶ Another opinion was expressed by Hartono that maladministration is behavior that is not fair, not polite and lack of concern for community problems, acts of abuse of power, unfair, discriminatory, decisions that make no sense and are against the law.¹⁷

*Department for Work and Pensions, said Maladministration was not defined. However, the term maladministration is sometimes used to describe when our actions or when we don't act result in services to consumers that are not in accordance with the commitments we provide. This applies in situations where we do not act properly or provide poor service. Maladministration for example is wrong advice, impoliteness, errors and delays.*¹⁸

¹¹ Paulus Effendie Lotulung, *op.cit.*, p. 101.

¹² GoI. (2009). Undang-undang Nomor 25 Tahun 2009 tentang Pelayanan Publik. Jakarta: Pemerintah Indonesia (Government of Indonesia).

¹³ Undang-undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah. Jakarta: Pemerintah Indonesia (Government of Indonesia)

¹⁴ Ridwan HR dan Nurmalita Ayuningtyas Harahap. (2018), *Hukum Kepegawaian*, UII Press, Yogyakarta, p. 141.

¹⁵ Hendra Nurtjahjo et.al., (2013), *Memahami Maladministrasi*, Ombudsman Republik Indonesia, Jakarta, p. 4.

¹⁶ Joko Widodo. (2001). *Good Governance*, Insan Cendikia: Surabaya, p. 159.

¹⁷ Rody Wahyudi et.al., “Perilaku Maladministrasi Birokrasi Dalam Pelayanan Publik di Kota Pekanbaru, Provinsi Riau : Faktor Penyebab dan Solusinya”, *Jurnal Administrasi Publik*, No. 1, Volume 12, (2015), p. 59.

¹⁸ Department For Work and Pension, 2017, *Financial Redress for Maladministration*, dikutip dari A'an Efendi dan Freddy Poernomo, *Hukum Administrasi*, Sinar Grafika, Jakarta, p. 135.

Article 1 Paragraph (3) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, Maladministration is behavior or acts against the law, exceeding authority, using authority for other purposes than which is the purpose of this authority, including negligence or neglect of legal obligations in the implementation of public services carried out by State Administrators and the government which causes material and/or immaterial losses to the community and individual.

Syntactically, the substance of Article 1 point 3 of Law no. 37 of 2008 concerning the Indonesian Ombudsman which provides a definition of maladministration can be broken down as follows:¹⁹

1. Unlawful behavior and acts;
2. Behavior and actions that exceed authority;
3. Using authority for purposes other than the purpose of that authority;
4. Negligence;
5. Waiver of legal obligations;
6. In administering public services;
7. Performed by State Administrators and government;
8. Causing material and/or immaterial losses;
9. For society and individuals.

In addition, we need to know the forms of maladministration actions carried out by government officials due to:²⁰

- 1) Mis Conduct, namely doing something in the office that is contrary to the interests of the office.
- 2) Deceitful practices, namely lying practices, not being honest with the public. The public is presented with misleading information, information that is not true, for the benefit of bureaucrats.
- 3) Corruption that occurs due to abuse of authority, including using authority for purposes other than the purpose of granting authority, and with such actions for the benefit of enriching oneself, other people, groups or corporations that are detrimental to state finances.
- 4) Defective Policy implementation, namely policies that do not end with implementation. Decisions or political commitments only stop until the deliberation of the law or the ratification of the law, but not until it becomes a reality.
- 5) Bureaupathology is the diseases of this bureaucracy.

In article 42 of Government Regulation Number 96 of 2012 concerning the Implementation of Law Number 25 of 2012 concerning Public Services it is explained that community participation in public services is conveyed in the form of input, responses, reports and/or complaints to the organizers and their direct superiors as well as related parties or through the media. mass. As service users, the public can supervise the public service standards that have been set. If in practice the community does not get service according to the service standards that have been set, the community has the right to submit their complaint to the available complaint unit.

Completion of Public Reports/Complaints against Public Service Providers (external complaint handling) is part of the Maladministration Prevention activities in the Public Service Implementation Oversight Program. Settlement of Community Reports/Complaints is defined as reports/complaints received by the Ombudsman which are resolved through various methods including clarification, investigation, monitoring, mediation, and recommendations. Substance distribution to the main assistantship of the Republic of Indonesia Ombudsman headquarters for Complaints of Public Reports/Complaints are: 1) Main Assistantship I (Law

¹⁹ Hendra Nurtjahjo, et.al. (2013), *Memahami Maladministrasi*, Ombudsman Republik Indonesia, Jakarta.

²⁰ *Ibid.*

Enforcement I) – Justice and Human Rights; 2) Main Assistantship II (Law Enforcement II) – Defense, Security and Customs & Excise; 3) Main Assistantship III (Economy I) – Trade, Industry, Finance and Health; 4) Main Assistantship IV (Economy II) – Agrarian, Land and Property; 5) Main Assistantship V (Economy III) – Energy, Personnel, Labor and Forestry; 6) Main Assistantship VI (Economy IV) – Infrastructure, Transportation, Information Technology and Environment; 7) Main Assistantship VII (Humanities) – Education, Religion, Social, and Population Administration.

2. The Effectiveness of the role of the West Nusa Tenggara Ombudsman in the village

Public services that are not good with all the procedural dynamics are social problems that are external in nature and require supervision from the state.²¹ Public services or public services with guaranteed quality are organized in the context of achieving the ideals of a welfare state. The high demands and expectations of the community to obtain good quality public services need to be supported by strong administrative oversight.

The existence of a supervisory institution is one of the options for the community to carry out checks and balances related to public services. The accountability aspect is the main focus in improving the quality of public services where the government must explain in an open, complete, and fair manner, and can be accountable to the public.²² Currently the Ombudsman of the Republic of Indonesia is an institution that is expected to function as a supervisor in its position between the executive and legislature for better public services. The Ombudsman is an independent body that investigates complaints from citizens about government administration and provides solutions in addition to those traditionally available in the courts.²³

The West Nusa Tenggara Representative Ombudsman often receives reports on allegations of misuse of village fund management, whether carried out directly by unscrupulous village heads or involving village administrators and officials. The Ombudsman also receives maladministration complaints such as not providing services, requests for compensation, money, goods/services (extortion), procedural deviations, discrimination, and neglect of authority obligations.

If we refer to Article 74 of Law number 6 of 2014 concerning Villages, it emphasizes that village expenditures are prioritized to meet development needs which include basic services, the environment, and village community activities, while still adhering to a transparent and accountable management system.

Departing from these conditions, the Ombudsman of the Republic of Indonesia West Nusa Tenggara Representative as a state institution overseeing the implementation of public services in the regions needs to conduct further studies regarding the Implementation of Public Services and Efforts to Prevent Maladministration at Village offices in a number of Regencies in West Nusa Tenggara.

The study initiated by the Assistant Examination of the Indonesian Ombudsman Representative for West Nusa Tenggara is meant to carry out supervision based on the delivery of public services and prevention efforts, as well as capturing citizen complaints. As mandated in Law Number 25 of 2009 concerning Public Services, in order to know the potential for

²¹ Septianingtyas, D. A., & Sulistyowati. (2020). Analisis Peran Ombudsman Republik Indonesia Periode Tahun 2016-2021 Sebagai Pengawasan Pelayanan Publik. *Journal of Politic and Government Studies*, 10(1), 25-36. Retrieved from <https://ejournal3.undip.ac.id/index.php/jpgs/article/view/29567>

²² Imbaruddin, A., Saeni, A.A., & Muttaqin (2021). The Role of Ombudsman in Improving Accountability of Government Public Services. Proceedings of the 2nd International Conference on Administration Science 2020 (ICAS 2020). Series: Advances in Social Science, Education and Humanities Research Volume 564, 195-

197. <https://doi.org/10.2991/assehr.k.210629.036>

²³ Gill, C., Mullen, T., & Vivian, N. (2020). The Managerial Ombudsman. *The Modern Law Review*, 83(4), 797-830. doi:10.1111/1468-2230.12523

maladministration that has occurred and suggestions for improvement that are expected to improve the quality of public services and efforts to prevent maladministration at the Village Offices.

This initiative was also based on reports submitted by the community to the Ombudsman and a number of Ombudsman findings indicating that maladministration occurred, such as in the case of population administration services, most villages were found to have no media for disseminating information on administrative services as stated in Article 8 letter e number (2) Permendes number 22 of 2016 and article 6 paragraph 2 Permendagri number 2 of 2017 which mandates that village government officials hold information disclosure to encourage a participatory society.

Many people complained that the village head and his apparatus were not transparent about the use of village funds, the administration was not orderly, the public was not participatory and the evidence for the use of these funds was incomplete. In other issues related to land administration services, a number of villages visited by the Ombudsman did not have clear technical guidelines/references for services, even though Articles 5 and 7 of Permendagri Number 2 of 2017 concerning minimum service standards for the Village Head must comply with these standards.

In terms of land registration letter services, there are still village heads issuing land registration letters even though the Regulation of the Minister of Agrarian Affairs/Head of BPN number 3 of 1997 only allows village heads to issue land certificates by also referring to an accurate land database, not to mention residents' complaints. Villages related to infrastructure and health whose conditions have never received adequate improvement.

From a number of these findings, the village is a place that is very prone to corruption and maladministration. The main causes are: limited knowledge or dissemination of prevention of corruption and maladministration, limited human resources in the village, absence of derivative regulations regarding the implementation of village public services, and the lack of coordination between ministries/agencies with regional/village governments plus the "sterile" oversight system from the inspectorate, head area, and BPMPD.

To overcome this condition, there are at least three important points so that the village can avoid corruption and maladministration:

- 1) The village government needs a legal basis and clear instructions. especially in the planning, use, and accountability transparency of village funds;
- 2) provide public service standards, especially creating a public complaints unit. where all villages can be connected in a system both at the regional and central levels (based on LAPOR for more effective oversight);
- 3) increase the participation of villagers in village development and open up contributions to community development in the village plus accountability for managing the budget according to the rules.

D. CONCLUSION

The Ombudsman as a supervisory body for administering public services in carrying out its role to support good governance, carries out its duties by receiving reports/complaints from every Indonesian citizen or resident against allegations of maladministration by state administrators. Based on the results of the substantive examination, the Ombudsman can carry out written clarifications, field investigations and summons. The results of the Ombudsman examination can be in the form of: a. reject the report, or b. Receive reports and provide recommendations. In addition, the Ombudsman can mediate/conciliate to obtain an agreement between the parties, and also conduct special adjudication related to settlement of compensation if this cannot be resolved through mediation and conciliation. In supervising

public services, apart from receiving reports from the public, the Ombudsman can also carry out on his own initiative through a systemic review, the results of which can be in the form of recommendations/suggestions. To ensure compliance with efforts to resolve the Ombudsman by the Reported Party or the Reported Party's superiors, the Ombudsman conducts direct monitoring or through the media/publications and submits periodic and annual reports to the President of the Republic of Indonesia and the People's Representative Council.

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