

Urgency of the Ombudsman in the District in monitoring the Operation of Public Services

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Abstract—This study was based on the background of the condition of public services in Indonesia which is still considered poor by the public using public services. Many complaints and criticisms have been expressed by the public to government institutions, service providers, both at the central and regional levels. The aim of this study was to develop more effective ombudsman representatives for public service complaint services against regency/city governments using normative juridical method and qualitative method with library research. The results of the study, mal-administration has the potential to occur in the implementation of public services. To oversee the implementation of public services, Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia has been published. In its development, it has 34 Ombudsman representatives in provincial capitals with the duties to follow-up mal-administration complaints from community members. It can be concluded, the urgency is formed by the representatives in regencies/ cities. Then, the community members are easier and closer to access complaints when harmed or finding mal-administration in the implementation of public services in their areas

Keywords— public servants, mal-administration, ombudsman

I. INTRODUCTION

Some fundamental problems in the administration of public servants, in addition to the effectiveness of organizing and relatively poor public participation in service delivery, public services have not had effective complaints mechanism and dispute resolution. As a result, the quality of service products has not satisfied its users.

The existence of the Ombudsman in Indonesia is highly needed by the people today along with the increase in population and the variety of problems experienced by the community in obtaining their rights as citizens. The main objective of the establishment of the Ombudsman institution in Indonesia is to prevent abuse of power and to protect the rights of citizens.

At present, there are 34 (thirty-four) Ombudsman representative offices in 34 provinces. The existence of the Ombudsman in Indonesia, when associated with existing supervisory institutions, is a new supervisory institution compared to the supervisory institutions that have been formed previously. The Indonesian Ombudsman as the front guard in monitoring public services seeks to respond quickly to follow up on community reports and to coordinate directly with public service providers. The public complaint reports of alleged maladministration

received by the Indonesian Ombudsman in 2018 to the second quarter were 4,114 reports and 555 copies. Among the reports, 971 reports had been completed and the rests are in the process of handling. On the basis of the information, the data shows that there is a fairly sharp gap between the numbers of entering and completed reports.

The duties and authorities of the Indonesian Ombudsman are broader with the promulgation of Law Number 25 of 2009 concerning Public Services and Law Number 23 of 2014 concerning Regional Government as amended several times with the latest of Law No. 9 of 2015. The scope of work of the Ombudsman reaches regions which, in the Ombudsman law, is possible to establish Ombudsman representative offices in Provinces, Regencies, and Cities. The fundamental question that arises is whether, with the number of representations only at provincial level and one head office to date, it is quite effective and efficient to reach the handling of public complaints in the vast territory of Indonesia. In addition, the ability of the community is very diverse so that not all levels of society are able to take advantage of it based on digital technology; not to mention the issue of distance and economic capacity to go to complaint points which are still in provincial capitals. Meanwhile, the supervision objects of the Ombudsman even reaches the Villages related to the use of the Village Funds (DD) and Village Fund Allocation (ADD) as a consequence of the enactment of Law Number 6 of 2014 concerning Villages. The existence of villages in Indonesia within the framework of the Unitary State cannot be separated from the units of Regional Government

II. RESEARCH RESULTS AND ANALYSIS

A. Research Results

Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia is the basis of the Ombudsman of the Republic of Indonesia to exercise its authority in supervising the implementation of public services organized by the State and the government, including those held by BUMNs (State-Owned Companies), BUMDs (Regional-Owned Companies), and State-Owned Legal Entities given the task of organizing certain public services which in part or all of their funds come from the APBN (State Budget) or APBD (Regional Budget). The position of the Ombudsman Institution is as an independent state institution. The Indonesian Ombudsman is obliged to submit annual and periodic reports to the DPR (People's Representative Council) and the President as a form of

accountability to the public for the implementation of their duties.

The Chairperson of the National Ombudsman can form the representatives of the Ombudsman in provincial, regency/ city areas which are the integral parts of the National Ombudsman. All laws and other provisions that apply to the National Ombudsman also apply to the Ombudsman Representatives in the regions. The Representatives of the Ombudsman as mandated by Article 5 and Article 43 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia have a strategic position in assisting or facilitating public access to obtain services from the Ombudsman of the Republic of Indonesia. For the Ombudsman of the Republic of Indonesia, the establishment of the Ombudsman representatives can also facilitate the implementation of its functions, duties, and authorities throughout the territory of Indonesia because the Ombudsman Representatives are the extension and have a hierarchical relationship with the Ombudsman of the Republic of Indonesia.

Furthermore, Article 3 Paragraph 1 of Government Regulation Number 21 of 2011 concerning Formation, Composition and Work Procedures of the Representatives of the Ombudsman of the Republic of Indonesia in the Regions states:

"The establishment of the Ombudsman Representative is based on a feasibility study conducted by the Ombudsman by taking into account community needs, availability of resources, effectiveness, complexity, and workload."

Therefore, the establishment of the Ombudsman Representatives is not always carried out in all provinces or districts / cities, but it is based on the needs of the community ". The embodiment in the form of the Ombudsman Representative of the Republic of Indonesia is to reduce or prevent public service maladministration. In fact, the existing Ombudsman Representatives of the Republic of Indonesia in the Provinces have received reports or complaints on the increasing implementation of public services.

B. Analysis

Welfare state is often suspected from the attributes of social service policies and social transfers provided by the state to its citizens. Richard Titmuss, in the *Essays on the Welfare State* had received a special place in the studies of welfare state. His book can be said as a magnum-opus which deeply examines the idea of welfare state as follows: "a welfare state is a state in which organized power is deliberately used through politics and administration; it attempts to modify the play of market forces to achieve social welfare and economic well-being of the people". In essence, social welfare is a human rights that must be fulfilled by the state. Then, human rights are a central point of state consideration in making social policies. The basic rights of citizens that must be fulfilled by the state are; the right to get social security, the right to get a job, the right to get a proper place to live, the right to get education, the right to get health services, and other social guarantees. When the citizens' rights are not fulfilled by the state, the

state has committed human rights violations and has not carried out its functions.

Indonesia, by the struggle of the founders in their aspirations to realize people welfare, chooses the form of welfare state as the right choice for the condition of the state of Indonesia. It is stated in the Pancasila, particularly the fifth precept; "social justice for all Indonesian people". The social justice to be achieved is managed by the environments of powers (executive, judiciary, and legislature) and other power environments that contribute to the efforts to achieve social justice both within the Central and Regional Government. The power environment has the potential to abuse power and authority so that, in its implementation, it needs to be supervised both internally and externally, particularly when performing public service functions.

In a government system in Indonesia, supervision can be carried out by the institutions out of the supervised organs of government (external supervision) and can also be carried out by institutions within the government (internal supervision). External supervision is carried out by the state institutions such as the House of Representatives (DPR), the Supreme Audit Agency (BPK), the Supreme Court and lower judicial institutions. This external supervision is also carried out by the community which can be performed by individuals, community groups, non-governmental organizations (NGO) and mass media (press). In its development, it includes those carried out by the Ombudsman of the Republic of Indonesia.

Internal supervision can be carried out by the institutions made specifically by the government such as the Financial and Development Supervisory Agency (BPKP), the supervision carried out by the Inspectorate General in each ministry, the Regional Supervisory Agency (Bawasda, and the supervision in the government environment performed by the direct superiors of the state official/ administrative body. The establishment of the Ombudsman of the Republic of Indonesia is basically aimed at realizing good governance. The term governance is not the same as government. Ganie-Rochman suggests that the concept of "government" refers to a management organization based on the highest authority (state and government). "Governance" involves not only the government and the state, but also the role of various actors out of the government and the state so that the parties involved are also very broad.

The United Development Program (UNDP) in his workshop concluded that "good governance system is participatory, implying that all members of governance institutions have a voice in influencing decision-making". A good governance system is participation, which states that all members of governance institutions have a voice in influencing decision making. This is the foundation of legitimacy in the democratic system. The procedures and methods of decision-making must be transparent (transparent) so as to allow for effective participation. Whoever is chosen to make decisions in government, business and civil society organizations must be accountable to the public, as well as to stakeholder institutions. Governance institutions must be efficient and effective in carrying out their functions, responsive to the

needs of the people, facilitative, and provide opportunities (enabling) rather than controlling, implement in accordance with the rule of laws.

One effort to realize good governance is by reforming the bureaucracy. The purpose of the presence of the Ombudsman of the Republic of Indonesia is to supervise public services and to avoid maladministration. According to Jimly Asshiddiqie, in a modern state system based on the rule of law and the constitution, the state, the market, and civil society must be in a position that must be balanced in a synergistic relationship and functionally supportive. However, the distinction between the three is considered important so that the three do not intervene in each other's affairs. These three regions or domains of power have their own logic and laws. All three are idealized must go hand in hand and be in line, equally strong, and share mutual control with one another, but they may not interfere with one another or be mixed up.

Viewing from the concept of public service referring to Law No. 25 of 2009 concerning Public Services, it is necessary to see whether the performance of the Ombudsman of the Republic of Indonesia has been synchronized with the public services referred to in the law. In the Public Service Law, the definition of public service is an activity or series of activities in order to fulfill service needs in accordance with the rule of laws for every citizen and resident for goods, services and/ or administrative services provided by public service providers.

The Ombudsman is one of the external supervisory institutions in addition to public supervision and the supervision of the DPR / DPRD (House of Representative/ Regional House of Representative) which has the right to supervise public services. Law Number 25 of 2009 concerning Public Services mandates that the Ombudsman of the Republic of Indonesia:

- a. shall accept and be authorized to process complaints from the public regarding the implementation of public services in accordance with this Law;
- b. shall settle public complaints when the complainant wants the resolution of the complaint not to be carried out by the Operator;
- c. shall establish a hierarchical representation in the region to support the duties and functions of the ombudsman in public service activities no later than 3 (three) years since the enactment of Law No. 25 of 2009 concerning Public Services
- d. shall mediate and conciliate in resolving complaints at the request of the parties.

Under Article 6 of Law No. 37 of 2008, the Ombudsman functions to supervise the implementation of public services held by State Administrators and governments both at the central and regional levels including those held by State-Owned Companies, Regionally-Owned Companies, and State-Owned Legal Entities as well as private or assigned agencies hold certain public services. Basically, the supervision is fully directed to avoid the possibility of fraud or deviation from the

objectives to be achieved. Through supervision, it is expected to help implement the policies that have been set to achieve the planned goals effectively and efficiently. Even through supervision, an activity is created that is closely related to the determination or evaluation of the extent to which the work has been carried out. Supervision can also detect the extent to which the leadership policy is carried out and the extent to which deviations have occurred in the implementation of the work.

In Indonesia today, there are approximately 514 regencies/ cities, in the development of the implementation of broad autonomy, which are given the freedom to manage their own houses in accordance with the capabilities of the regions. when detailed, according to the Minister of Home Affairs Regulation Number 56 of 2015 concerning the Code and data on government Administration areas, it is stated that the number of villages (Desa and Kelurahan) in Indonesia is 83,184 (74,754 Desa + 8,430 Kelurahan). The existence of the Ombudsman in the regions (up to Regencies/ Cities) is part of a system built for local governments to strengthen the position of public services in the regions so that with the synergy of the ombudsman and regions to regencies/ cities, in the future, the prospects for public services implemented by local governments (regencies/ cities) can run optimally.

III. CONCLUSION AND SUGGESTION

A. Conclusion

The establishment of regency/ city ombudsman must be carried out because it is a consequence of the extent of the regency/ city household affairs that attaches in broader public service needs, shortens distance, time efficiency, and facilitates access for village communities to report maladministration by public service providers in the region.

B. Suggestion

It is necessary to continue the socialization on the existence of the Ombudsman in the constitutional system in Indonesia because there are still many levels of society who do not know what the ombudsman's authority, duties and functions, particularly the people whose regions are not represented by ombudsman.

REFERENCES

- [1] Abdulkadir Muhammad, 2004, *Hukum dan Penelitian Hukum*, Citra Aditya Bakti, Bandung.
- [2] Galang Asmara, 2005, *Ombudsman Nasional dalam Sistem Pemerintahan Negara Republik Indonesia*, Laksbang, Yogyakarta.
- [3] J.J. Bruggink, 1999, *Releksi Tentang Hukum*, Alih Bahasa Arif Sidharta, Citra Aditya Bakti, Bandung.
- [4] Jhoni Ibrahim, 2006, *Teori dan Penelitian Hukum Normatif*, Bayumedia Publisng, Surabaya.
- [5] Jimly Asshiddiqie, 2004, *Konstitusi dan Konstitusionalisme Indonesia*, PSHTN FH-UI, Jakarta.
- [6] JimlyAsshiddiqie, 2005, *Format Kelembagaan Negara dan Pergeseran Kekuasaan Dalam UUD 1945*, FH-UII Press, Yogyakarta.
- [7] Joko Widodo, *Good Governance*; 2001, *Telaah Dari Dimensi Akuntabilitas, Kontrol Birokrasi Pada Era Desentralisasi Dan Otonomi Daerah*, Insan Cendekia, Surabaya.

- [8] M. Busrizalti, Hukum Pemda: Otonomi Daerah dan Implikasinya, 2013, Yogyakarta: Total Media, Yogyakarta .
- [9] Sedarmayanti, Good Governance (Kepemerintahan Yang Baik), 2004, Bagian Kedua, CV. Mandar Maju, Bandung.
- [10] Triwibowo dan Bahagijo, ed., 2006, Mimpi Negara Kesejahteraan, LP3ES. Jakarta.
- [11] LAWS :
- [12] UUD Republik Indonesia Tahun 1945
- [13] UU Nomor 37 Tahun 2008 tentang Ombudsman Republik Indonesia.
- [14] UU Nomor 25 tahun 2009 tentang Pelayanan Publik.
- [15] UU Nomor 23 Tahun 2014 tentang Pemerintahan Daerah sebagaimana yang terakhir diubah dengan UU Nomor Undang-Undang Republik Indonesia Nomor 9 Tahun 2015 tentang Perubahan Kedua Atas Undang-Undang nomor 23 tahun 2014 Tentang Pemerintahan Daerah.
- [16] INTERNET AND OTHERS :
- [17] <https://www.bappenas.go.id/id/>
- [18] <http://www.ombudsman.go.id/produk/?c=19&s=LTR>
- [19] <http://repository.uinjkt.ac.id/dspace/bitstream/123456789/35311/1/MAMUR%20RIZKIFDK.pdf>
- [20] Laporan Tri Wulan II Tahun 2018 Ombudsman RI