



# Ombudsman as an Independent Oversight Body for Public Service in Indonesia: An Opinion

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## ABSTRACT

Public Service rules state that an Ombudsman can settle a dispute involving public services. Since the decision has value as a suggestion, the Ombudsman's findings are given as recommendations. Then, legal action may be taken according to the law. This study examines how the ombudsman's recommendations as an independent oversight agency affect public service delivery in Indonesia. This study employed a normative legal technique to compare the Ombudsman's recommendations to regulations, legal principles, legal theories, and other literature. The Ombudsman oversees the implementation of public services organized by State Administrators and government at the center and in the regions, including those held by State-Owned Enterprises, Regional-Owned Enterprises, and State-Owned Legal Entities, as well as private entities or individuals tasked with administering public services. The Ombudsman supervises public service delivery and resolves disputes. The Ombudsman uses Mediation and Adjudication to resolve public service problems. However, the Ombudsman is not a court, thus in order to provide recommendations, it is important to acknowledge this. The Ombudsman's recommendation isn't legally binding. Although the steps from a report to the Ombudsman's suggestion are similar to court verdicts, the Reported Party and its superior who don't follow the advice face administrative punishment. On this basis, it is necessary to analyze the Ombudsman's authority, the position of his mandated recommendations, and the Indonesian rule of law's legally enforceable definition.

**Keywords:** *Recommendation; Ombudsman; Public Services*

## 1. INTRODUCTION

A sovereign state needs an institution that functions as a supervisor of public services, because it is impossible for the government to be able to supervise itself. In order to avoid and eradicate abuse of authority by state and government officials, the supervision of services done and held by the state and government is essential to the creation of a good, clean, and effective government as well as the execution of democratic values [1].

Indonesia adheres to a trias politica system dividing power into the legislature, judiciary and executive. The Ombudsman does not have jurisdiction over the legislative and judicial branches of power, but has the authority to investigate public complaints against the executive branch in general, the ombudsman institution deals with public complaints about maladministration carried out by government administering institutions to conduct an objective investigation of public complaints

regarding government administration. Often the Ombudsman has the authority to take the initiative to carry out investigations even without complaints from the public, this is a manifestation of the understanding adopted by the Indonesian Ombudsman, namely adopting a proactive Ombudsman system, this is considered important because the Ombudsman as the supervisor of public policy can always monitor acts of maladministration which is conducted by state officials and government [2].

The state tries to respond by establishing an institution that is autonomous, lacks organic links to state institutions and other government agencies, and is free from interference from other powers in carrying out its tasks and authorities. The National Ombudsman Commission was created by Presidential Decree 44 of 2000. The National Ombudsman Commission aims to eliminate corruption, collusion, and nepotism through community involvement [3]. Article 38 of Law 37 of

2008 on the Ombudsman of the Republic of Indonesia requires recommendations to the Reported Party and its Superior. If the Reported Party or its superior violates these regulations, extra administrative fines will be enforced and reported to the House and President.

The Ombudsman's suggestion is one of the legal powers he has to address public complaints about maladministration in public services. After clarification, field investigations, mediation/conciliation, and submitting the Final Research Result Report (LAHP), recommendations are made regarding maladministration for which the Reported Party and the Reported Party's Superior need a correction or improvement but have not yet reached a settlement. Since the introduction of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, the Ombudsman's recommendations have changed [4].

The stance of recommendations based on Law Number 37 of 2008 pertaining to the Ombudsman of the Republic of Indonesia is not merely a suggestion, but instead carries legal penalties for the Reported Party and the Reported Party's superiors who do not comply. Similarly, the recommendation can only be issued by a member of the Ombudsman, which consists of 1 (one) Chairman who is also a member, 1 (one) Deputy Chair who is also a member, and 7 (seven) members. Representatives of the Ombudsman of the Republic of Indonesia in each province lack the authority to make recommendations.

**2. METHOD**

This paper describes the position of the ombudsman's recommendations as an independent supervisory agency for the execution of public services in Indonesia using a normative juridical technique [6] with an orientation to the rule of law, legal principles, and legal systematics.

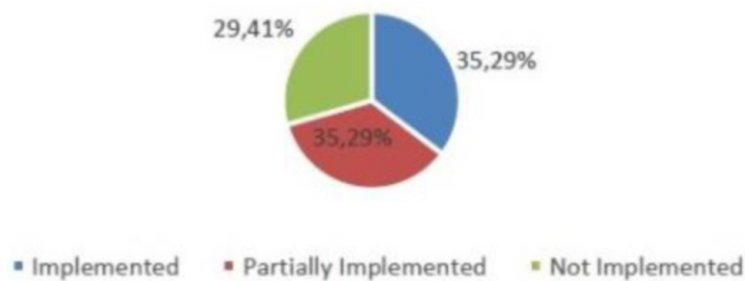
**3. RESULT AND DISCUSSION**

The word "recommendation" can signify both "suggestion" and "counsel." Advisory guidance given to government officials or state administrators about how to

improve services for which the public has expressed dissatisfaction is a natural extension of an Ombudsman's responsibilities and powers. According to the Ombudsman's guidelines, it is his duty to develop good governance and provide a suitable atmosphere for services in the form of a fair law, which includes eradicating and combating corruption behavior [7].

A thorough investigation by the Ombudsman yields conclusions or proof of maladministration, which the Ombudsman then presents to the agency that has been accused of it. As a result of the investigation, a summary of what happened, as well as findings and conclusions from Ombudsman's investigation, are included in Ombudsman's recommendations to the Reported Party and/or Reported Party's superior [8]. The suggestion is sent to the Reporting Party, the Reported Party, and the Reported Party's superiors within fourteen (14) days of the date the Chief Ombudsman signs the recommendation. The superior of the Reported Party is then required to provide a report to the Ombudsman within sixty (60) days from the date of receipt of the recommendations regarding the implementation of the recommendations and the results of the examination [9].

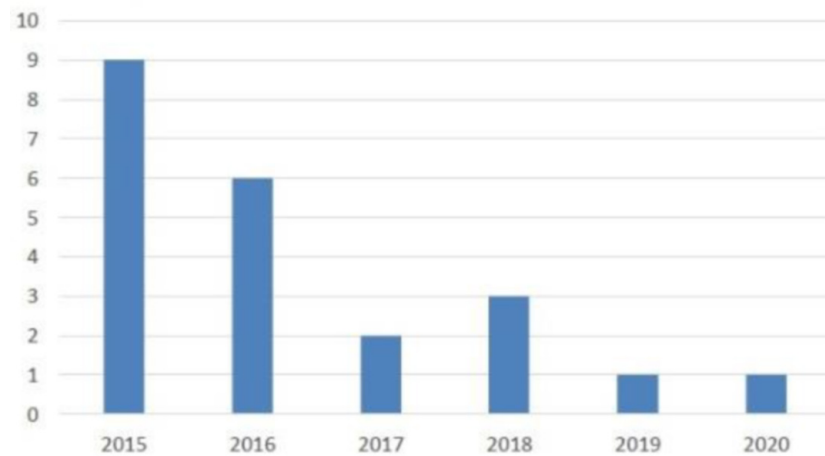
If the Reported Party and its superiors refuse to implement or partially implement the recommendations for reasons the Ombudsman finds unacceptable, the Ombudsman may publish the names of those who refuse to implement the recommendations and submit a report to the House of Representatives and the President. The Reported Party and the Reported Party's superiors who breach the provisions set forth in Article 38 paragraphs (1), (2), or (4) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia are liable to administrative consequences [10]. Before issuing a recommendation, the Ombudsman must review the incoming report. After conducting the examination, the Ombudsman can assess, based on the results of the substantive examination, whether he or she is permitted to continue the investigation. The Ombudsman of the Republic of Indonesia has not given an excessive amount of recommendations. As depicted in Figure 1, this is the case.



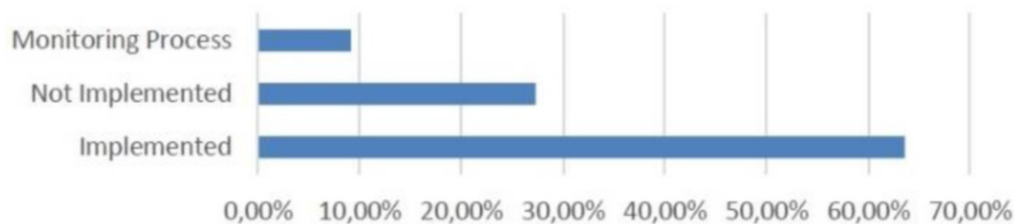
**Figure 1** The Number of Implementation of the Ombudsman Recommendation the republic if Indonesia years 2014-2018

Based on the data above, not 100% of government agencies have implemented the Ombudsman's

recommendations, as an effort to improve public services.



**Figure 2** The Number of Ombudsman recommendations 2015-2020



**Figure 3** The Number of Implementation of the Ombudsman Recommendation the republic if Indonesia years 2015-2020

In analyzing the Report, the Ombudsman shall adhere to the principles of independence, nondiscrimination, objectivity, and cost-free service. Article 30 of Law No. 37 of 2008 provides that the Ombudsman is required to respect secrecy when conducting investigations, unless the public interest requires disclosure.

After receiving the report and then conducting an examination, the Ombudsman can issue the results of the examination in the form of:

- a. Reject the report; or
- b. Receive Reports and provide Recommendations. In the case of examination of the report of the Chairperson, Deputy Chairperson, and members of the Ombudsman, they are prohibited from participating in examining a report or information that contains or may cause a conflict of interest with him.

Obstacles faced by the Ombudsman in implementing recommendations, including: the weak of the rules which is governing about the implementation of Ombudsman recommendations, the low level of awareness of state and government officials in complying with recommendations from the Ombudsman, and Ombudsman not being an executive institution. There are no clear administrative sanctions given to state and government officials for not following the Ombudsman's recommendations under Indonesian law number 37 of 2008. Because the Ombudsman can only provide

recommendations that are only legally binding, the Reported Party and its superiors who do not implement the Ombudsman's recommendations face administrative sanctions.

#### 4. CONCLUSION

The Ombudsman Institution is an independent governmental institution; in carrying out its duties and responsibilities, the Ombudsman Institution is not subject to interference from any other entity. In carrying out his responsibilities and powers, the Ombudsman is guided by decency, fairness, nondiscrimination, impartiality, accountability, balance, transparency, and secrecy. Implementation of the Ombudsman's recommendations continues to fall short of expectations. There are still several state and government administrators who do not follow the Ombudsman's recommendations. The Ombudsman is incapable of carrying out the implementation of the stated recommendations. In addition, state and government officials' understanding of the Ombudsman's recommendations is still poor; therefore, the regulations governing the implementation of the Ombudsman's recommendations must be revised so that the recommendations of the Ombudsman become declaratory or condemnatory decisions.

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