





Comparison of Settlement Public Service Compensation Disputes at The Administrative Court and Ombudsman Republic Indonesia

Lintang Ario Pambudi¹, Weda Kupita¹, Dwiki Oktobrian¹

¹ Universitas Jenderal Soedirman, Purwokerto, Indonesia
lintang.ario@unsoed.ac.id

Abstract. Reports to the ombudsman regarding public services have been increasing annually. In 2022, the number of reports reached 22,197. This necessitates a review of the dispute resolution process for compensation that is swift, straightforward, and legally certain. This paper will discuss two main topics. Firstly, the process of resolving public service disputes at the Ombudsman and the Administrative Court. Secondly, the challenges faced in executing decisions related to compensation for public service losses. This research is a normative juridical study, utilizing secondary data obtained through a literature review on the resolution of public service compensation disputes and products issued by the competent institution. It employs the statute approach, conceptual approach, and comparative approach. The research indicates that the ombudsman has a faster and simpler dispute resolution mechanism, but the Administrative Court offers more legal certainty. A significant challenge in executing decisions is that neither institution has a specialized execution body. Thus, execution is based on self-respect and heavily relies on the public service provider responsible for the maladministration. Suggestions that can be given are to establish a separate execution institution that specifically handles the execution of administrative decisions.

Keywords: Administrative Court, Ombudsman Republic Indonesia, Public Service Compensation.

1. Introduction

Providing services to the public is a governmental duty that pertains to the rights of individuals and groups within the principle of the Rule of Law.[1] Effective public service delivery promotes the realization of Good Governance, leading to efficient administration and the achievement of objectives outlined by legislative regulations, ultimately contributing to the establishment of a welfare society.[2] However in reality, the implementation of public services remains far from expectations, characterized by high levels of abuse of authority, lengthy bureaucracy, and unclear service standards. [3] Consequently, the aspirations for achieving Good Governance and a Welfare Society remain significant ongoing challenges.

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The Ombudsman, as an oversight institution for public service delivery, has several objectives, including: enhancing efforts to eradicate and prevent maladministration practices and improving the quality of public services. The Ombudsman plays a distinct role in the governance and societal fabric, acting as an integral component of democracy that influences the evolution of legal culture and strengthens legal awareness within the community. [4] Public awareness of their right to quality public services has been on the rise. This is evident from the increasing number of reports submitted to the Ombudsman year after year. Data from the Ombudsman's 2022 annual report indicates that the number of reports in 2018 stood at 10,075, which doubled by 2022, reaching 22,197 reports.

Disputes related to public services can be reported to the Ombudsman as an alternative non-litigious resolution method. Alternatively, they can also be brought before the Administrative Court for litigation-based resolution. The Administrative Court gained the authority to resolve public service disputes following the enactment of the Government Administration Law. This legislation expanded the jurisdiction of the Administrative Court, which previously only adjudicated *Beschikking/Decisions*, to now also judge factual actions of the government..[5] Additionally, when filing a lawsuit in the Administrative Court, a claim for compensation can be included as an additional plea.

This research aims to examine the process of resolving public service compensation disputes in the non-litigious domain through the Ombudsman and the litigious resolution via the Administrative Court. The objective is to identify a swift, straightforward, and legally certain avenue for resolving public service compensation disputes. Previous research has addressed the resolution of such disputes through the Ombudsman and the Administrative Court, but these studies primarily focused on the jurisdictional concepts of each institution, as well as the philosophy and function of the Ombudsman in resolving public service disputes.

2. Problems

Reports on public service compensation to the Indonesian Ombudsman have seen an increase over a span of five years. This surge can be attributed to the growing public awareness of their rights to quality public services. Given the volume of reports received annually, it is essential to compare the "Dispute resolution processes for public service compensation in the Administrative Court (*PTUN*) and the Indonesian Ombudsman" to determine which institution offers a swift, straightforward, and legally certain resolution. Furthermore, it is crucial to examine the "Challenges in executing decisions on public service compensation disputes" as execution is a fundamental aspect of dispute resolution.

3. Method

This manuscript aims not only to compare the dispute resolution processes for public service compensation through the Administrative Court (*PTUN*) and the Indonesian Ombudsman but also to discuss the challenges inherent in the resolution process of public service compensation disputes. The research employs a normative juridical method with a prescriptive research specification. The findings are derived from literature and document studies. Secondary data originates from authoritative products issued by competent institutions and various literature on the resolution of public service compensation disputes. The research approach incorporates a legislative approach, a conceptual approach, and a comparative approach.

4. Discussion

The Indonesian Ombudsman holds the authority to issue recommendations for compensation payments to aggrieved parties, as stipulated in Article 8, paragraph (1), clause f of Law No. 37 of 2008 concerning the Indonesian Ombudsman. Such actions can be undertaken if there is proven maladministration and resultant damages from said maladministration. The resolution process for public service compensation disputes through the Ombudsman is governed by Article 50, paragraph (5) of Law No. 25 of 2009 on Public Services, outlining three mechanisms: mediation, conciliation, and special adjudication. Detailed procedures for report reception, examination, and resolution are further specified in the Indonesian Ombudsman Regulation No. 26 of 2017, in conjunction with the Indonesian Ombudsman Regulation No. 48 of 2020. Specifically, the mechanisms and procedures for Special Adjudication are set out in the Indonesian Ombudsman Regulation No. 31 of 2018. Despite the existence of regulations concerning compensation, the implementation of these legislative provisions still faces various challenges.

4.1. Difference in Perspective on the Regulation of Public Service Dispute Compensation between the Law and the Ombudsman's Regulation.

Table 1 Regulation of Public Service Compensation in the Law.

Law No. 37 of 2008 concerning the Indonesian Ombudsman	Law No. 25 of 2009 on Public Services	Additional Informations
Article 8, paragraph (1), clause f states that the ombudsman has the authority to make resolution recommendations for reports, including recommendations for compensation payments.	Article 50, paragraph (5) elucidates that the ombudsman has the authority to resolve compensation matters using various mechanisms such as mediation, conciliation, and special adjudication.	Law The Indonesian Ombudsman regulates compensation in only one article related to the Ombudsman's authority. The mechanism employed in the law is through recommendations, which are the final conclusions based on the Ombudsman's investigation results, deli-

	<p>vered to the superior of the reported party.</p> <p>Law Public service provision grants new authority to the Ombudsman to resolve public service dispute compensations through mechanisms such as mediation, conciliation, and special adjudication. Regarding compensation resolution, special adjudication is employed if the dispute cannot be resolved through mediation and conciliation.</p>
<p>Article 50, paragraph (6) specifies that the compensation resolution, as referred to in paragraph (5), should be implemented no later than 5 years from the enactment of this law.</p>	<p>There is a specified timeframe for resolving compensation related to public service disputes, which is 5 years after July 18, 2009, the date of enactment. This implies that by 2014, the resolution for compensation concerning public service disputes should have been effectively implemented.</p>
<p>Article 50, paragraph (7) states that the mechanisms and procedures for special adjudication are further regulated by the Ombudsman's Regulation.</p>	<p>The Ombudsman's Regulation No. 31 of 2018 has been issued, addressing the Mechanisms and Procedures for Special Adjudication.</p>
<p>Article 50, paragraph (8) specifies that the mechanisms and provisions for compensation payments are further governed by the Presidential Regulation.</p>	<p>As of 2023, there has been no Presidential Regulation issued regarding the provisions for compensation payments.</p>

The regulation of compensation for the resolution of public service disputes in the Law, as illustrated in Table 1, reveals that the Indonesian Ombudsman Law grants the Ombudsman the authority to issue recommendations to the superior of the reported party for compensation payments related to public service disputes. These recommendations, as the final outcome of the Ombudsman's investigation, are issued after all stages of report reception, examination, and resolution concerning damages due to maladministration in public services are completed. However, the Ombudsman does not always issue compensation recommendations in resolving the numerous public service reports. According to the infographic on the official Ombudsman website, from 2015 to 2020, the Ombudsman issued a total of 22 recommendations, despite receiving thousands of public reports annually. Between 2021 and 2022, the Ombudsman

issued 4 recommendations. This data suggests that the Ombudsman is highly selective in issuing recommendations.

The Public Service Law provides a distinct mechanism concerning the resolution of compensation for public service disputes. This law empowers the Ombudsman to conduct special adjudication as a mechanism for resolving compensation disputes in public services. This represents a novel mechanism for the Ombudsman, as the Ombudsman Law does not stipulate any provisions regarding special adjudication. Special adjudication can only be initiated when mediation and conciliation stages fail to resolve the encountered dispute. The mechanisms and procedures for special adjudication are outlined in the Ombudsman Regulation No. 31 of 2018. Although stipulated in the Ombudsman Regulation and clarified in the Public Service Law that effective compensation resolution can be implemented 5 years after the law's enactment, as of 2023, the Ombudsman has yet to employ the special adjudication mechanism in resolving compensation for public service disputes due to the absence of a Presidential Regulation on compensation payment provisions. Borrowing a term from Criminal Law, "Ultimum Remidium," this special adjudication is considered the last resort in addressing compensation issues in public service disputes.

Several aspects warrant further examination, particularly concerning the implementing regulations for resolving public reports. In addressing these reports, the Ombudsman adheres to the Indonesian Ombudsman Regulation No. 26 of 2017 on the Procedures for Receiving, Examining, and Resolving Reports, in conjunction with the Indonesian Ombudsman Regulation No. 48 of 2020, which amends the Indonesian Ombudsman Regulation No. 26 of 2017 on the same topic. It has been observed that there are differing perspectives on issuing recommendations for compensation payments. This can be discerned from various articles within the aforementioned Ombudsman regulations, such as:

Table 2 Ombudsman Regulations on the Procedures for Resolving Reports.

Indonesian Ombudsman Regulation No. 26 of 2017.	Indonesian Ombudsman Regulation No. 48 of 2020, amending the Indonesian Ombudsman Regulation No. 26 of 2017.	Additional Information
In the Third Section concerning Recommendations, Article 36 explains that recommendations are issued if mediation and/or conciliation fail to be implemented or if an agreement is not reached. Another prerequisite is that a form of maladministration must be identified.	Article 27 clarifies that when the ombudsman implements a rapid response in emergency situations, it is followed by stages of direct clarification examination, field inspection, or Mediation/ Conciliation.	When handling incoming reports, the Ombudsman prioritizes direct clarification and employs the mediation/conciliation mechanism before issuing recommendations. Recommendations serve as the last resort for the Ombudsman when mediation/ conciliation fails or an agreement is not reached.
The criteria for reports, as out-		

lined in Article 33, that can be resolved through mediation or conciliation pertain to disputes over service rights and the presence of damages experienced by the reporter or involving multiple parties affected by the report resolution policy.

Distinct perspectives emerge when comparing the Indonesian Ombudsman Law and the Public Service Law with the implementing regulations for public service dispute resolution reporting in the Ombudsman, as illustrated in Table 1 and Table 2. The compensation provisions in Table 1 indicate that the Indonesian Ombudsman Law advocates for compensation in the event of a public service dispute causing harm to the reporter and constituting an act of maladministration. Similarly, the Public Service Law grants broader authority to the Ombudsman in resolving public service disputes, allowing the application of special adjudication in the form of compensation settlements. The underlying spirit of both laws is the use of compensation as a mechanism to foster improved public services, ensuring the compliance of state administrators or the government in executing public service duties.

Diverging perspectives become evident when examining the Ombudsman's implementing regulations concerning the procedures for receiving, examining, and resolving reports, as detailed in Table 2. These Ombudsman regulations emphasize direct clarification with the reported party when a report is submitted to the Ombudsman and advocate for mediation/conciliation as the resolution method. This is evident from the report resolution stages, where recommendations containing compensation serve as the last resort if mediation/conciliation is unfeasible or fails to reach a resolution. Moreover, upon closer examination, it's clear that not all implementing regulations for this public service compensation mechanism are available, such as the Presidential Regulation that should have been established concerning the mechanism and procedures for compensation payments. The delay in issuing this Presidential Regulation also impacts the implementation of the Ombudsman Regulation No. 31 of 2018 on the mechanisms and procedures for special adjudication. As of 2023, the Ombudsman has yet to issue any special adjudication in resolving reports on compensation for public service disputes.

4.2. The Resolution of Public Service Dispute Compensation Falls Within the Jurisdiction of the Administrative Court.

The Public Service Law not only grants authority regarding the resolution of public service dispute compensation to the Ombudsman but also confers jurisdiction to the Administrative Court when a public service provider or executor causes losses in the realm of administrative governance. This is stipulated in the fourth section of the Public Service Law, which can be elaborated as follows:

Table 3 *The Jurisdiction of the Administrative Court in Resolving Public Service Dispute Compensation.*

Law No. 25 of 2009 on Public Services	Additional Information
Article 51 stipulates that individuals who suffer losses in the realm of administrative governance due to actions taken by the service provider or executor have the right to file a lawsuit through the Administrative Court.	The article further grants authority concerning the resolution of public service compensation disputes that fall within the purview of the Administrative Court, allowing for lawsuits to be filed in the Administrative Court.
Article 52, paragraph (1) elucidates that when a service provider commits an unlawful act in the administration of public services, the public has the right to file a lawsuit in court.	While Article 51 explicitly specifies which court is designated to resolve compensation disputes, Article 52, paragraph (1) does not clearly mention the appointed court. However, if the subject of the lawsuit involves a state administrative body/official and the object pertains to factual actions carried out by the state administrative body/official, as mentioned in Article 87 of Law No. 30 of 2014 on Government Administration, then the jurisdiction falls under the Administrative Court. This is in accordance with Article 1, number 8, Articles 75-78, Article 85, and Article 87 of the Government Administration Law..
Article 52, paragraph (2) emphasizes that filing a lawsuit does not absolve the service provider from the obligation to implement the Ombudsman's decision.	This provision signifies that even if a decision from the Ombudsman is already in place, individuals or parties who believe they have been wronged retain the right to file a lawsuit with the Administrative Court..
The filing of a lawsuit must be conducted in accordance with existing laws and regulations, as articulated in Article 52, paragraph (3).	Referring to Article 52, paragraph (3), since the lawsuit is filed with the Administrative Court, the procedural law to be applied is in accordance with: 1) Law No. 5 of 1989, 2) Law No. 9 of 2004, 3) Law No. 51 of 2009, 4) Law No. 30 of 2014

The mechanism and procedures for resolving compensation disputes in public service at the Administrative Court are not regulated in the Public Service Law, thus creating a condition of *Rechtsvacuum* or legal void. However, based on the principle of *Lex Specialis derogat legi Generalis*, where there is a specific legal rule regarding procedural law in the Administrative Court, the rules regarding procedural law in the Administrative Court, as mentioned in Table 3 point 3 in the description, are used as guidelines for resolving public service compensation disputes.[6] The following briefly explains the mechanism and procedures for resolving public service compensation disputes based on the Administrative Court Law and other regulations relevant to the dispute resolution process in the Administrative Court, such as: the Supreme Court Regulation. In simple terms, there are several dispute resolution procedures:

- a. Determination of the Subject and Object of the lawsuit. The subject of the lawsuit refers to an individual or legal entity acting as the plaintiff against the public service provider and the State Administrative Body/Official as the defen-

dant (refer to Article 1 number 12 and Article 53 of the Administrative Court Law Jo. Articles 51 and 52 of the Public Service Law). The object of the lawsuit pertains to decisions and/or factual actions, especially in the context of public services, that result in losses;

- b. An administrative process must first be undertaken (refer to Articles 75-78 of the Administrative Governance Law Jo. Article 2 of the Supreme Court Regulation No. 6 of 2018);
- c. The grace period for filing a lawsuit is 90 days, counted from the receipt of the administrative examination results (refer to Article 55 of the Administrative Court Law jo. Article 76 paragraph (3) of the Administrative Governance Law);
- d. A dismissal process is conducted before entering the examination phase by the head of the Administrative Court (refer to Article 62 of the Administrative Court Law);
- e. Case resolution, based on the Circular Letter of the Supreme Court No. 2 of 2014, should be completed within a maximum of 5 (five) months at the First Level Court and 3 (three) months for case resolution at the Appellate Level Court; and
- f. The main claim/request made by the plaintiff is to declare the annulment or illegitimacy of the decision/action regarding the public service being contested, with or without compensation (refer to Article 97 paragraphs (9) and (10) of the Administrative Court Law).

4.3. Efficient and Pragmatic Resolution of Public Service Compensation Disputes at the Ombudsman

The Ombudsman possesses non-litigation adjudicative authority, offering a more streamlined process compared to the Administrative Court. The Ombudsman's Special Adjudication in resolving public service compensation disputes positions the Ombudsman in a role akin to a judge, implying that there will be a binding decision for the disputing parties.[6] The execution of compensation through special adjudication is conducted in the form of a hearing, adhering to principles of speed, simplicity, independence, public transparency, and without incurring any fees.[7] The decision from the Special Adjudication is final and binding, thus the reported public service provider must implement the decision as there are no further legal remedies available.[3] In contrast, case handling in the Administrative Court can be time-consuming due to the procedural laws and the formalities required for dispute resolution.[9] Additionally, decisions from the Administrative Court are not immediately legally binding due to the potential for legal remedies if parties believe there was an error in a decision. Although the Special Adjudication decision is binding, its binding nature is equivalent to the recommendations issued by the Ombudsman. This is because monitoring is still required to ensure the reported party implements the special adjudication decision. [10]

The mechanism of special adjudication concerning public service compensation claims reported by the public has not been executed by the Ombudsman. This is closely linked to the Ombudsman's Regulations, which prioritize a persuasive approach towards the reported public service providers, encouraging them to proactively resolve reported public service disputes alleged to be maladministrative.[11] Such a persuasive approach is fitting, given that the Ombudsman is not a court with formal procedural characteristics; it occupies a softer position within the spectrum of administrative justice.[12] There exists a concept termed the "Ombudsman's Way," which emphasizes resolving public service disputes primarily through mediation and conciliation.[13] Upon deeper examination, it is evident that for 14 years, the Presidential Regulation detailing the mechanism and procedures for compensation payments has not been issued, even though it was mandated in Article 50, paragraph (8) of the Public Service Law. Consequently, it becomes clear that while special adjudication is theoretically an efficient and effective mechanism for resolving public service compensation disputes, its practical implementation faces significant challenges. To date, not a single public service compensation dispute has been resolved through this special adjudication process.

The resolution of compensation in public service disputes within the Administrative Court is characterized by its formal procedural nature, yet it offers greater legal certainty. This characteristic is intrinsically linked to Gustav Radbruch's theory of the three objectives of law: Certainty, Justice, and Utility.[14] To achieve these objectives, and in alignment with the civil law system adopted by Indonesia, formal procedural stages must be undertaken in accordance with prevailing laws. Further, the implementing regulations issued by the Supreme Court emphasize this procedural system.[15] This formal procedural approach assures judges that before rendering a final decision, they have engaged in a rigorous thought process based on legal logic, experience, and knowledge derived from specific parameters.[16] Urbanus Ura Weruïn's method, drawing from Lon Fuller's perspective, develops the IRAC Legal Reasoning Method, which stands for Issue, Rule of Law, Argument, and Conclusion. This method prioritizes analysis based on the issue at hand and the rule of law, leading to a definitive conclusion on a given matter.[17] In conclusion, while the resolution of disputes in the Administrative Court may require navigating through extensive procedural stages, it provides legal certainty. This is because the decisions are rendered by a judicial institution, the court, based on established legal mechanisms, judicial reasoning, and consideration of various pieces of evidence. Moreover, with the enactment of SEMA No. 2 of 2014, the resolution of cases at the first-instance court is mandated to be completed within a maximum of five months.

4.4. Challenges in Executing Decisions on Public Service Compensation Disputes

The enforcement of decisions from specialized adjudication and the Administrative Court lacks a dedicated institutional mechanism. The establishment of a specialized body for execution is pivotal to enhance the effectiveness of court decision implemen-

tation, acting as a direct follow-up to judicial rulings, a concept known as "grerechtelijke tenuitvoerlegging" or "execution force"..^[18] The absence of such an institution implies a reliance on self-respect/self-obedience and the floating execution system.^[19] This approach entrusts the execution to the conscientiousness of public service providers found guilty of maladministration. If non-compliance persists, the onus shifts to the superior of the defendant to adhere to the court's decision. Scholar Adrian Bedner articulates that such an execution model can lead to misconceptions about the independence of the judiciary. Furthermore, in certain instances, decisions remain unenforced due to concerns that their implementation might jeopardize societal and political stability.^[20]

The regulations concerning the mechanism and procedures for execution remain ambiguous. Firstly, regarding the specialized adjudication issued by the Ombudsman, even though the compensation mechanism for public service disputes is carried out through specialized adjudication, the Presidential Regulation detailing the compensation procedure has yet to be published. The absence of this Presidential Regulation implies that the execution of specialized adjudication decisions will not proceed as intended. The Ombudsman Regulation No. 31 of 2018 concerning the Mechanism and Procedures for Specialized Adjudication does not specify the execution of compensation, nor does it clarify whether the compensation is charged to an institution or an individual. To ensure the enforcement of the Ombudsman's decisions, the only instrument employed is Moral Binding, which involves publicizing the defendant's errors in the mass media, as stipulated in Article 38, paragraph (4) of the Ombudsman Law.^[9]

Secondly, regarding the decisions of the Administrative Court that have become legally binding (*Inkracht van gewijsde*), there has been a renewal of the Administrative Court Law, introducing coercive measures for administrative bodies or officials who are unwilling to execute binding court decisions. However, the regulations concerning the implementation of these coercive measures remain unclear, particularly in terms of the amount, who bears the cost, and the source of funding if charged to an institution.^[21] The legal framework that can be used as a reference for imposing coercive measures, in the form of *dwangsom*, is restrictively regulated in Government Regulation No. 43 of 1991. This regulation stipulates that such measures can be applied in cases related to negligence, resulting in the state having to pay compensation.^[22] In addition to coercive measures, this Government Regulation also restrictively determines the compensation range between IDR 250,000 to IDR 5,000,000, implying that claimants can only demand compensation within this range.^[23] Consequently, if the damages exceed this range, they will not be accommodated.

5. Conclusion

An examination of the dispute resolution process for public service compensation between the Ombudsman of the Republic of Indonesia and the Administrative Court reveals that, in practical and pragmatic terms, the Ombudsman's resolution process is

swifter due to the final and binding nature of special adjudication. However, at the implementation level, there exists a divergence in perspective between the law and the Ombudsman's regulations, resulting in the special adjudication mechanism never being executed. In contrast, the resolution process in the Administrative Court is more procedurally formal, taking a relatively longer duration, but offers greater legal certainty. This is because decisions are issued by an authorized judicial institution, examined under a clear and systematic procedural law, and have a definitive timeframe for case resolution, capped at a maximum of five months.

The primary challenge arising from the resolution of public service compensation disputes pertains to the execution of issued decisions. Both dispute resolution institutions, namely the Ombudsman of the Republic of Indonesia and the Administrative Court, lack a specialized body to oversee execution. The execution is based on principles of self-respect/self-obedience and the floating execution system. Consequently, the execution heavily depends on the respondent/defendant in the public service compensation dispute. If they fail to comply with the decision, there are only two available options: firstly, employing the Moral Binding instrument by publicly announcing the error in the media, and secondly, instructing the superior of the respondent/defendant to implement the issued decision. Suggestions that can be given are to establish a separate execution institution that specifically handles the execution of administrative decisions and strengthening the supervision of judges in the implementation of decisions.

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