

# **The Authority of the Ombudsman of the Republic of Indonesia in Handling Maladministration in Public Services: A State Administrative Law Perspective**

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## **Abstract**

The consequence of the welfare state concept requires the government to provide excellent public services for the community. To oversee the implementation and prevent maladministration, the state established the Ombudsman of the Republic of Indonesia through Law Number 37 of 2008. Legal issues that arise in state administration practice are the end product of the Ombudsman's authority in the form of "Recommendations" which are only magistrature of influence (Moral Influence) and do not have the force of execution like a court decision. This results in these recommendations often being ignored by state administration agencies. This research is a normative legal research that uses a statute approach and a conceptual approach. Based on the perspective of State Administrative Law, the results of the research itself indicate that the position of the Ombudsman is as an external supervisory institution (state auxiliary organ) tasked with maintaining bureaucratic compliance with the General Principles of Good Governance (AUPB). To address the weak legal binding power of the Recommendation, a legal construction with integrity is needed. This ideal



construction is built by synchronizing the Ombudsman Law with the administrative sanction instruments in Law Number 25 of 2009 concerning Public Services and also Law Number 30 of 2014 concerning Government Administration. Through this construction, the act of ignoring the Recommendation itself is categorized as a violation of the AUPB, thus mandatorily forcing the reported official's superior, under the supervision of the Government Internal Supervisory Apparatus (APIP), to impose administrative sanctions on personnel in stages to ensure certainty of resolution.

### **KEYWORDS**

*Authority, MaLadministration, Ombudsman, Public Service, State Administrative Law*

## **Introduction**

As a welfare state, Indonesia has a constitutional responsibility to ensure the welfare of its citizens. The government must actively intervene in the social and economic life of the community to achieve general welfare. This welfare is realized through the provision of public services by state officials.

From the perspective of State Administrative Law (HAN), every government action in providing public services must be based on the principle of legality and the general principles of good governance (AUPB). The presence of State Administrative Law not only serves to provide a basis for government authority but also serves to limit that power to prevent arbitrary actions or abuse of authority.

However, a closer look at the reality on the ground (*das sein*) shows that the provision of public services in Indonesia is still frequently plagued by numerous irregularities, such as prolonged delays, incompetence, abuse of authority, and demands for compensation, which are still frequently experienced by the majority of the public (Zulkifli, Ismail, and Dhoni Martien 2025). These irregularities in government administration are

known as maladministration. Maladministration itself is a form of deviation from the General Principles of Good Governance (AUPB) and also a violation of the public's rights to excellent public services as stated in Law Number 25 of 2009 concerning Public Services ("No Title" 2021).

Therefore, in an effort to monitor and provide legal protection for citizens against maladministration, the state established an external oversight agency, the Republic of Indonesia Ombudsman. Pursuant to Law Number 37 of 2008 concerning the Republic of Indonesia Ombudsman, this institution is authorized to receive reports, conduct investigations, and issue recommendations regarding alleged maladministration by state officials and the government.

Therefore, from a State Administrative Law perspective, the existence and implementation of this ombudsman's authority still pose interesting theoretical and practical issues to examine. Given that the ombudsman's recommendations lack the force of law like a court ruling, this presents unique challenges if the reported agency ignores or fails to implement the recommendations, ultimately harming the public (Harapan Harahap and Kwek 2025).

Considering the gap between the expectation of public services free from maladministration and the reality on the ground regarding the authority of the supervisory institution, a legal analysis is needed to discuss this supervisory instrument. Therefore, this article will analyze in depth the "Authority of the Indonesian Ombudsman in Handling Maladministration in Public Services: A State Administrative Law Perspective" to understand the position of the Ombudsman in enforcing the AUPB and restoring the rights of the community from maladministration (Made et al. 2008).

## Methods

The method is written in descriptive and should provide a statement regarding the methodology of the research. This method as much as possible to give an idea to the reader through the methods used. Both Research and Review Article should explain the method. For the research article it is clear the method should describe the location of the study, the data collection method, and how the data were analyzed. Meanwhile, in the Review Article, the method is written descriptively regarding the topic being analyzed, what theories and laws are used to analyze the topic and the limitations of the study.

To address the previously outlined legal issues, this article employs normative or doctrinal legal research. This method was consciously chosen because the primary focus of the study was not to measure empirical effectiveness in the field, but rather to identify the lack of clarity in norms and the weaknesses in the administrative binding power of the ombudsman's recommendations. To address these issues, a monetary analysis is used based on a combination of legislative and conceptual approaches. The legislative approach serves as the primary step in exploring the hierarchy of sectoral regulations, specifically the intersections between Law No. 37 of 2008 concerning the Indonesian Ombudsman, Law No. 25 of 2009 concerning public services, and Law No. 30 of 2014 concerning government administration (In and Maladministration 2024). Overall, the legal material search in this research relies on library study techniques, where the database used is purely sourced from secondary data obtained through intensive searches of HAN literature, expert doctrines, and critical reviews of various previous journals within the last five years (D. I. K. Batam 2020). All legal materials that have been collected are then systematically processed and also analyzed using normative qualitative techniques. By using deductive reasoning, namely drawing conclusions from the general

principles of HAN to solve problems surrounding the ombudsman's authority, this analysis is ultimately aimed at formulating a more ideal legal construction to ensure that the handling of maladministration has real certainty.

## **Result and Discussion**

### **1. The Position and Authority of the Ombudsman of the Republic of Indonesia in Handling Maladministration: A State Administrative Law Perspective**

To comprehensively examine the position of the Ombudsman of the Republic of Indonesia, we need to place it within the framework of the state system and governance adopted by Indonesia (Soedja et al. 2024). As adherents of the welfare state concept, the government itself has ample room for maneuver in the form of free authority (*freis ermessen* or discretion) which can intervene in public affairs to realize the welfare of citizens (Nggandung et al. 2024). However, as stated by Philipus M. HadJon in the classic literature of State Administrative Law, the extent of this government authority itself has the potential to give rise to arbitrary actions (*detournement de pouvoir*). Because of this, it is absolutely necessary to have a means of legal protection for the community (Land and Medan 2025). It is in this context that the Ombudsman institution exists. In terms of institutions, the position of the Ombudsman can be constructed as a state auxiliary organ which is independent and also free from interference from any power, as has been clearly mandated in Article 2 of Law Number 37 of 2008 (Soedja et al. 2024). This independent position is very risky so that the Ombudsman can carry out its external supervisory function objectively

without pressure from the government agencies it is overseeing (D. I. K. Batam 2020).

If viewed more deeply from the perspective of State Administrative Law (HAN), the position of the Ombudsman is not a judicial institution (judicial) or executive institution as a policy implementer, but as a "stage judge" of state administration which works based on the principles of restorative justice and also administrative improvement (Finata et al. 2025). Contemporary administrative law literature positions the Ombudsman as a supervisory instrument whose task is to ensure that the administration of government does not deviate from the General Principles of Good Governance (AUPB) (Hasjimzoem 1945). This means, the presence of the Ombudsman is a balance (checks and balances) against the game of public service by the state bureaucracy, as well as being a bridge for the public who experience a deadlock when faced with an old bureaucratic wall (Panjang 2021).

In terms of its authority, the State Administrative Law regime clearly distinguishes between the authority to form decisions (*beschking*) and the authority to supervise (Semar et al. 2025). Law Number 37 of 2008 also comprehensively authorizes the Ombudsman to receive, examine, and investigate public reports regarding alleged maladministration in the provision of public services. When synchronized with Law Number 25 of 2009 concerning Public Services, the scope of this maladministration is very broad, including prolonged delays, abuse of authority, procedural deviations, and neglect of legal obligations by state officials (Kurniawan, Irawan, and Alfarisi 2024). In carrying out its investigation, the Ombudsman is equipped with the authority to summon the complainant, the accused, and witnesses for questioning, and even has the right to directly review the field (Rancang et al. 2025).

However, the appeal and also the point of contention of the Ombudsman's authority from the perspective of HAN lies in the final

resolution of its reports. Unlike the State Administrative Court (PTUN), whose authority is a magistrature of sanction, meaning it can annul State Administrative Decisions (KTUN) and also has coercive power as an executor, the Ombudsman's authority itself is conceptualized as a magistrature of influence (Kewenangan et al. 2023). This concept means that the Ombudsman's power pivots on moral influence, institutional authority, and public transparency through the final product in the form of Recommendations. According to institutional studies of supervisors themselves in various administrative law journals, this nature of magistrature of influence is often misinterpreted by state administrative officials as optional or not legally binding (Nggandung et al. 2024). In reality, in substance, the administrative authority to issue these recommendations is a mandate of the Law, which includes a legal obligation for the superior of the reported party to carry it out in order to restore public rights that have been violated due to maladministration (Mikraj et al. 2024).

Thus, it can be concluded that in the perspective of State Administrative Law, the position of the Ombudsman is as an independent external supervisor of state administration, while its authority is centered on the discovery of maladministration facts and the issuance of corrective instruments in the form of Recommendations (Yanti et al. 2026). Although the legal product does not have the nature of canceling (*vernietigbar*) like a court decision, the Recommendation is an instrument to guard bureaucratic compliance with the AUPB which logically must be obeyed by state administrators in order to create orderly government administration (Hakim 2015).

## **2. The Ideal Administrative Law Construction to Strengthen the Binding Power of the Ombudsman's Recommendations**

The fundamental weakness in the current design of the authority of the Ombudsman of the Republic of Indonesia lies in its resolution mechanism when a recommendation is not implemented by state administrators. Normatively, Article 38 and Article 39 of Law Number 37 of 2008 outline that if the reported official does not implement the recommendation, the Ombudsman can only report the matter to the House of Representatives (DPR) and the President (U. P. Batam 2025). In the study of State Administrative Law (HAN), this kind of settlement construction is considered inadequate because it shifts purely administrative issues (public services) into political solutions. This political approach has proven to be slow, not comprehensive in improving the bureaucracy, and often obscures the essence of protecting the rights of people who are victims of maladministration. Therefore, an ideal administrative law construction is needed so that the Ombudsman's recommendations are transformed from mere moral appeals (magistrature of influence) into legal instruments that have certainty of action (Lembaga et al. 2020).

This ideal construction does not have to be achieved by transforming the Ombudsman into a new judicial institution, but rather through synchronization and optimization of the sanction instruments already regulated in the legal regime of state

apparatus. The starting point of this construction is to integrate the Ombudsman's supervisory power with the sanctions stipulated in Law Number 25 of 2009 concerning Public Services (Law 2018). Article 54 of the law explicitly opens the legal door that state officials who do not implement the Ombudsman's Recommendations can be subject to administrative sanctions, ranging from written warnings, dismissal from office, to dishonorable dismissal not at their own request. However, what happens in practice is that this often becomes flawed due to the lack of a procedural mechanism that automatically forces the official's superior to impose such sanctions ("Ejournal.Mejailmiah Adagium" 2023).

To enforce and enforce these administrative sanctions, the ideal legal construction must be based on the principles of Law Number 30 of 2014 concerning Government Administration. In the HAN doctrine, the actions of state administrative officials who ignore the recommendations of official state supervisory institutions constitute a form of state that ignores the recommendations of official state supervisory institutions, which is a clear form of arbitrary action and a violation of the General Principles of Good Governance (AUPB), especially the principle of legal certainty and the principle of accuracy ("No Title" 2023). By using the construction of the Government Administration Law, disregard for the Ombudsman's Recommendations must be categorized as a defect in authority. The logical consequence of which is that the "Superior Official" of a reported agency has a binding legal obligation (mandatory) to execute administrative

sanctions against his subordinates who have committed maladministration (ahmad. marfud 2025).

Furthermore, to ensure that the obligations of these officials' superiors are not merely paper tigers, their institutional structure must be tied to the involvement of the Internal Government Oversight Apparatus (APIP), such as the Regional Inspectorate or the Inspectorate General of a Ministry. In this ideal scheme, the Ombudsman's legally binding recommendations are forwarded directly to the APIP as the basis for findings that must be followed up internally ("No Title" 2025b). If the "Superior Official" allows or refuses to impose sanctions on subordinates who ignore the Ombudsman's recommendations, then, based on the administrative chain of command, the superior will be sanctioned by a higher-ranking official for allegedly committing an act of omission (tolerance) of the violation of the AUPB(Ii et al. 1999).

It can be seen that through the integration of the Ombudsman Law, the Public Service Law, and the Government Administration Law, a robust and solid administrative law is established. While the Ombudsman does not directly impose sanctions, its recommendations are automatically linked to the government's internal civil service sanctions system. In this way, certainty regarding the resolution of maladministration can be guaranteed without having to wait for a long judicial process or uncertain political lobbying (Skripsi et al. 2008).

## **Conclusion**

### **1. The Position and Authority of the Indonesian Ombudsman**

From a State Administrative Law perspective, the Indonesian Ombudsman serves as an independent external supervisor of state administration (state auxiliary organ). Its presence serves as a balancing instrument to ensure that state officials do not abuse their discretionary authority and remain compliant with the General Principles of Good Governance (AUPB)(Untuk et al. 2019). The Ombudsman's authority is based on fact-checking of maladministration, which culminates in the issuance of recommendations. This legal product is a manifestation of magistracy of influence. Although it does not have the power to directly overturn state administrative decisions (vernietigbaar), these recommendations create an administrative legal obligation for state officials to implement them in order to restore the public's right to public services.

### **2. Ideal Legal Structure to Strengthen the Binding Power of Recommendations**

The weakness of the Ombudsman's coercive power in recommendations can be addressed without changing the court structure, namely by synchronizing and optimizing civil service sanction instruments. The ideal administrative legal structure is to integrate the Ombudsman's products into Law Number 25 of 2009 concerning Public Services and Law Number 30 of 2014 concerning Government Administration(Anas 2020). In this structure, ignoring recommendations is categorized as a form of authority defect and a violation of the AUPB. Consequently, the internal

government chain of command operates automatically. The superior of the official from the reported agency, with a copy sent to the Government Internal Supervisory Apparatus (APIP), is obliged to impose administrative sanctions on his subordinates. If the superior refuses to implement the sanctions, the sanctions are imposed in a cascading manner to the superior who allowed the incident to occur, ensuring a concrete and binding resolution of the maladministration (Belakang 2009).

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