

The Nature of Ombudsman Recommendations as a Legal Product in Influenceing Improving Public Services in Indonesia

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ABSTRACT

This research was conducted to answer three main problem formulations, namely; 1). What is the essence of the Ombudsman's recommendations as a legal product in influencing the improvement of public services in Indonesia? 2). What form do the Ombudsman's recommendations take as a legal product in an effort to influence public services in Indonesia? 3). How to implement recommendations. Ombudsman as a legal product can improve public services in Indonesia?

The type of research that will be used is normative legal research, using a problem approach which includes a statutory approach (Statute Approach), a conceptual approach (Conceptual Approach) and a case approach (Case Approach).

The results obtained are that the Ombudsman Recommendation is one of the legal products used as the final step (ultimum remedium) in resolving maladministration and improving public services in Indonesia, by the Ombudsman. The juridical basis for the Ombudsman's recommendations as a legal product is contained in the Ombudsman Law and also the Public Services Law, which are two laws that form the basis for the Ombudsman in issuing recommendations. Apart from that, there are several derivatives of related laws and regulations which further regulate the technicalities of making recommendations. However, in practice, these recommendations are often seen as mere suggestions that have no compelling power. This causes a low level of compliance with the Ombudsman's recommendations, even though legally these recommendations are binding and must be implemented in accordance with the Ombudsman Law and the Public Service Law. The Ombudsman's recommendations are designed to include suggestions, corrective actions, and investigation results that support improving the quality of public services.

This form of recommendation is certainly very effective and aims to provide concrete solutions to maladministration problems in various sectors in order to create good governance and improve better public services. However, their effectiveness is often hampered by a lack of recognition of the legal force of the recommendations and the absence of strong direct sanctions for those who do not comply. Implementation of the Ombudsman's recommendations still faces various challenges, including a lack of legal awareness and compliance from relevant parties. Without more effective monitoring mechanisms and the authority to force implementation, these recommendations are difficult to optimize. This condition shows the need for legal reconstruction and a new approach to strengthen the role of the Ombudsman in realizing transparent, accountable and high quality public services.

Keywords: Recommendations, Ombudsman, Legal Products, Public Services

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E. Introduction

The birth of the Ombudsman in Indonesia cannot be separated from demands for reform. Since the beginning of the reform era, society's demands for a government that is clean, transparent and free from Corruption, Collusion and Nepotism (KKN) have become increasingly unstoppable. The community wants more effective supervision to take action and minimize irregularities that lead to KKN. In order to meet these demands, the government then established a number of independent supervisory institutions, including the National Ombudsman Commission.

The existence of the Ombudsman in Indonesia began with the formation of the National Ombudsman Commission (KON) based on Presidential Decree Number 44 of 2000 concerning the National Ombudsman Commission which was ratified on March 20 2000. This was a manifestation of the wishes of the Reform Era Government which was then under President Abdurrahman's leadership. Wahid, to be able to create a clean government, free from collusion and nepotism and lead to the realization of a clean government. Furthermore, on October 7 2008, Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (hereinafter abbreviated to the Ombudsman Law) was issued.

The Ombudsman as a state institution has the authority to supervise the implementation of public services, is tasked with receiving reports, examining the substance of reports, following up on reports, carrying out

investigations and coordinating with other state institutions to build networks, as well as preventing maladministration in the form of studies on problems occurring in society. Apart from carrying out other tasks according to law, the series of tasks above will produce output which can be in the form of mediation results, conciliation, announcement of compliance survey results, suggestions for corrective action and recommendations.

In this article, the author emphasizes the recommendations which, according to Article 1 point 7 of the Ombudsman Law, are: "conclusions, opinions, suggestions prepared based on the results of the Ombudsman's investigation, to the Reported Party's superiors to be implemented and/or followed up in order to improve the quality of government administration Good". Furthermore, regarding these recommendations, the law states that the Ombudsman's recommendations must be implemented. This is stated in Articles 38, 39 of the Ombudsman Law, namely:

Article 38:

- (1) The Reported Party and the Reported Party's superiors are required to implement the Ombudsman's Recommendations
- (2) The Reported Supervisor is obliged to submit a report to the Ombudsman regarding the implementation of the Recommendation that has been carried out along with the results of the examination within a period of no later than 60 (sixty) days from the date of receipt of the recommendation.
- (3) The Ombudsman may request information from the Reported Party and/or his superiors when conducting field inspections to ensure the implementation of the Recommendations
- (4) in the event that the reported party or the reported superior does not implement the recommendations or only partially implements the recommendations for reasons that cannot be accepted by the Ombudsman, the Ombudsman can publish the reported superior who does not implement the Recommendations and submit a report to the House of Representatives and the President."

Meanwhile, regarding problems for the Reported Party or the Assistant Reported Party who do not implement the Recommendations, they will be subject to sanctions as regulated in Article 39 of the Ombudsman Law which reads:

"The reported party and the reported superiors who comply with the provisions as intended in Article 38 paragraph (1), paragraph (2) and paragraph (4) are subject to administrative sanctions in accordance with the provisions of statutory regulations."

Become the basis that since the passing of the Ombudsman Law, the Reported Party and the Reported Party's superiors are obliged to implement the Ombudsman Recommendations and if they do not comply they will be subject to administrative sanctions. However, at the implementation level, there are still many Reported Parties who do not implement the Ombudsman's Recommendations.

This research is included in the qualitative research category with a post positivism paradigm and a socio legal research approach. This research is to predict and control phenomena which in this case relate to the current conditions of implementation of the Ombudsman's recommendations by predicting an implementation model that is considered more appropriate. The choice of the post positivism paradigm is intended to help in forming a model for implementing the Ombudsman's recommendations in order to improve excellent public services throughout Indonesia.

The social setting in this research includes three elements, namely place, actors and processes or activities. The place used as research area is the Ombudsman of the Republic of Indonesia in Jakarta. This place was chosen considering that the head office of the Ombudsman of the Republic of Indonesia is in Jakarta and the Ombudsman's recommendation is a product of the Central Ombudsman because it must be signed by the Chairman of the Ombudsman. In addition, the places to obtain data are the Maluku Province Ombudsman Representative Office and the North Maluku Ombudsman Representative Office. This is because it can be seen to what extent the recommendations proposed by these two representatives, in practice some were partially implemented, some were not implemented and some implemented the recommendations.

Meanwhile, those related to the actors or research subjects are the Ombudsman of the Republic of Indonesia at the Center as the party who signed the Recommendation, the Representative Ombudsman in Maluku Province as the party who received complaints about maladministration problems, government agencies that received the Ombudsman's recommendations and community members who reported maladministration problems to the Ombudsman.

The Central Ombudsman, as the party that issues the recommendations and also monitors the implementation of the recommendations, in reality has not been able to make its supervisory function effective in accordance with the mandate of the Ombudsman Law because it does not have the authority to compel and impose administrative sanctions on the Reported Party or the Reported Party's superiors. Many Reported Persons and their superiors still interpret recommendations as ordinary advice, not as a legal obligation that must be fulfilled as mandated by the Ombudsman Law. This has a big impact on the attitude of not feeling guilty if you don't

implement the Ombudsman's recommendations. In fact, this recommendation is considered not strong and ineffective because it has no coercive power.

Theoretically, a recommendation is a recommendation or suggestion that has no legal consequences at all, whether it is implemented or not implemented has no legal consequences. However, on the other hand, the Ombudsman's recommendation is the result of an examination carried out by the Ombudsman carefully and with great care regarding the evidence and facts which prove that maladministration has been carried out in a real and convincing manner. In general, Ombudsman Recommendations also contain legal orders in the form of imposing administrative sanctions, so that Ombudsman Recommendations have binding force according to law, have evidentiary force and have executorial force.

Philosophically, the Ombudsman's Recommendation is a means of resolving public service maladministration and should be a legal product that is final and binding, so that its substance is complied with by the Reported Party, as the party that should be responsible for the occurrence of maladministration. Compliance with these legal products is not only based on symbols of power and the threat of sanctions that accompany them. The meaning of law should be based on legal awareness which arises from the assessment that a legal product is considered important and has justice value.

There is legal reconstruction after the discovery of legal limitations in resolving maladministration of public services, especially in the implementation of Ombudsman Recommendations as legal products that have legally binding force. It is possible for the Ombudsman to play an active role in developing the national legal system, through recommendations as legal products, which are full of legal norms and norms of propriety. This all took place when the validity of the Ombudsman's Recommendations was recognized as a legal product included in the framework of the national legal order.

F. Research Methods

In accordance with the legal issues of this research, the type of research that will be used is normative legal research, namely research that examines positive legal provisions, legal principles, legal principles and legal doctrine in order to answer the legal issues being faced. According to Peter Mahmud Marzuki, legal research is a process of discovering legal rules, legal principles and legal doctrines to answer the legal issues faced.¹ In connection with this research issue, this type of normative legal research was used to find out whether the Ombudsman's Recommendations could change the face of public services in Indonesia.

This research uses a problem approach which includes a statutory approach (Statute Approach), a conceptual approach (Conceptual Approach) and a case approach (Case Approach).² Sources of legal materials needed in this legal research include primary legal material sources, secondary legal material sources and tertiary legal material sources. Sources of primary legal materials are sources of legal materials that come from direct observation or observations at the scene of the incident and through interviews with parties who know and are related to what has happened and is happening in the local community and its surroundings regarding maladministration and public service issues.

While secondary data is data sourced from library research. Where the data is not obtained directly from the first source, but rather comes from data that has been documented in the form of legal materials, both primary legal materials, secondary legal materials and tertiary legal materials. Tertiary legal materials are non-legal materials, which are used to explain primary legal materials or secondary legal materials, for example dictionaries, encyclopedias, etc.

G. Results and Discussion

1. The Essence of Ombudsman Recommendations as Legal Products

The Indonesian Legal System according to the amendment to the 1945 Basic Law (UUD) also places supporting state institutions (Auxiliary Institutional Constitutional), namely state institutions whose names are mentioned but whose position, duties and authority are not given by the constitution but by law therefore The Indonesian Ombudsman supervises public services carried out by state institutions and supporting state institutions as well as every agency funded by the APBN, including the private sector which has a task from the government to serve the public in the constitution to assist state institutions that are determined to carry out state functions for the realization country goals.³

Article 2 of the Ombudsman Law confirms that the position of the Ombudsman is a state institution that is independent and has no organic relationship with other state institutions and government agencies, and in carrying out its duties and authority is free from interference from other powers. From this position, it is

¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Pranada Media, 2005). p 35.

² Ibid.

³ Abdulkadir Muhamad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004). p. 202

necessary to clarify where the position of the Ombudsman of the Republic of Indonesia is in the Legal System in Indonesia?.¹ The 1945 Constitution as a result of the amendment places all state institutions in a position of balance and control (checks and balances). There is no state institution that is more dominant than other state institutions, such as during the supremacy of the MPR before the amendment to the 1945 Constitution. Indonesia can no longer be analyzed using the Trias Politica model of separation of powers.

The role of the Ombudsman of the Republic of Indonesia as a supervisor of public services is an effort to realize good governance through three main elements which form the basis of general principles of good governance, namely public accountability, legal certainty and public transparency. The existence of the Ombudsman of the Republic of Indonesia in the Indonesian constitutional system, according to the concept of division of powers, in principle plays a role as a state institution that carries out a supervisory function over public services provided by state administrators.

With such duties and functions, the existence of the Indonesian Ombudsman is vital in fulfilling the protection and welfare of the community as part of the goals of the state. As contained in the implementation of Good Governance principles. Good Governance emerged after criticism of the dominance of government institutions in carrying out governing functions. In good governance terminology, the government is only one of the pillars of several government functions, in addition to the private sector (business world) and civil society (civil society).²

The creation of good governance which in principle consists of three pillars, namely: accountability, transparency and accessibility, one of which can be achieved through strengthening supervisory institutions, both internal supervisory institutions such as the DPR, DPD, BPK, Inspector General to Bawasda, as well as external monitoring institutions, such as NGOs, the press, including the Ombudsman.

The existence of the Republic of Indonesia Ombudsman Law also does not close the door or prohibit regional governments or the community from establishing local public service monitoring institutions. Because, in fact, the existence of this institution will really help the regional government and the ombudsman of the Republic of Indonesia. It's just that the name and authority may not be the same. The authority of existing public service supervisory institutions will strengthen internal supervision in their regions, while the Republic of Indonesia Ombudsman and its representatives in the regions will provide external supervision.

The characteristics of the Ombudsman as an institution that has the authority to resolve maladministration in the implementation of public services, apart from having extraordinary authority to carry out forced summons, has the right of immunity so that it cannot be investigated, arrested, detained or even sued in court. On the other hand, the Ombudsman must resolve maladministration in persuasive ways. In this case, the Ombudsman not only acts as a "watch dog" who only monitors and imposes sanctions, therefore the Ombudsman must also partner with government agencies to carry out supervision and guidance with the aim of realizing excellent quality public services.

The Ombudsman's recommendation is an authority that has the character of final remedy (ultimatum remedium), an effort made after persuasive resolution methods are no longer able to resolve and restore the maladministration that has occurred. Not all maladministration cases submitted to the Ombudsman are resolved with recommendations. If the Reported Party, after mediation with the Reporting Party, there is an agreement and it has been carried out properly and correctly, then the settlement does not need to be resolved through the next mechanism until the recommendation. It can also be that a new case is clarified by telephone to the Reported Party, the Reported Party has admitted that he was wrong and is willing to resolve the maladministration that is the Complainant's complaint, so that the maladministration case must also be considered resolved and the case closed (case closed).

In the context of implementing Law no. 37 of 2008, implementing regulations have been prepared in the form of:

1. Government Regulation Number 21 of 2011 concerning the Establishment, Composition and Work Procedures of Ombudsman Representatives in the Regions. This is in accordance with the mandate of Article 5 paragraph (3) of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. This was followed by the Republic of Indonesia Ombudsman Regulation Number 10 of 2012 concerning Implementation of Government Regulations concerning the Establishment, Composition and Work Procedures of the Republic of Indonesia Ombudsman Representative.³
2. RI Ombudsman Regulation Number 5 of 2010 concerning Requirements and Procedures for

¹ Warsito, *Administrasi Publik Baru Indonesia* (Yogyakarta: Pustaka Pelajar, 2006). p.81

² Imam Dani, "Ombudsman Republik Indonesia," Ombudsman RI, 2018, <https://ombudsman.go.id/artikel/r/artikel--independensi-ombudsman.p.1>.

³ *Ibid.*, p. 52-53.

- Appointment, Dismissal, Duties and Responsibilities of Assistant Ombudsman. This is in accordance with the mandate of Article 12 paragraph (3) of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.
3. Presidential Regulation Number 20 of 2009 concerning the Secretariat General of the Ombudsman of the Republic of Indonesia. This is in accordance with the mandate of Article 13 paragraph (4) of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.
 4. Government Regulation Number 64 of 2012 concerning the Human Resources Management System for the Ombudsman of the Republic of Indonesia. This is in accordance with the mandate of Article 13 paragraph (5) of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.
 5. Government Regulation Number 45 of 2010 concerning Income, Honorary Fees and other rights of the Chairman, Deputy Chairman and Members of the Ombudsman of the Republic of Indonesia. This is in accordance with the mandate of Article 18 of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.
 6. Republic of Indonesia Ombudsman Regulation Number 2 of 2009 concerning Procedures for Inspection and Completion of Reports. This is in accordance with the mandate of Article 41 of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.
 7. Republic of Indonesia Ombudsman Regulation Number 18 of 2015 concerning Organizational Structure and Work Procedures within the Republic of Indonesia Ombudsman.

Based on the description above, it can be said that the Ombudsman's recommendations are legal products that exist in Indonesian laws and regulations. Even though it is not an institution provided directly by the constitution (1945 Constitution), the existence of the Ombudsman is an important pillar in supporting good governance. The existence of the Ombudsman's recommendations in statutory regulations is recognized in the Ombudsman Law, the Public Service Law and other statutory regulations related to the Ombudsman (as mentioned above).

Based on Law no. 37 of 2008 concerning the Indonesian Ombudsman, the authority of the Ombudsman is as follows.

- 1) Request verbal and/or written information from the reporter, reported party, or
- 2) other related parties regarding the report submitted to the ombudsman.
- 3) Examine decisions, correspondence, or other documents held by the reporter or respondent to determine the truth of a report.
- 4) Request clarification and/or photocopies of required documents from any agency for inspection of the report.
- 5) Summon the reported party and other parties related to the report. Completing reports through mediation and conciliation at the request of the parties.
- 6) Make recommendations regarding the completion of the report, including recommendations for paying compensation and/or rehabilitation to the injured party.

Furthermore, Article 46 of the Public Services Law, especially the second part regarding the resolution of complaints by the Ombudsman states that:

- (1) The Ombudsman is obliged to receive and have the authority to process complaints from the public regarding the implementation of public services in accordance with this law.
- (2) The Ombudsman is obliged to resolve public complaints if the complainant wishes that the complaint not be resolved by the organizer.
- (3) The Ombudsman is obliged to form hierarchical representatives in the regions to support the ombudsman's duties and functions in public service activities.
- (4) The establishment of ombudsman representatives in the regions as intended in paragraph (3) shall be carried out no later than 3 (three) years after this law is promulgated.
- (5) The Ombudsman is obliged to carry out mediation and conciliation in resolving complaints at the request of the parties.
- (6) Settlement of complaints as intended in paragraph (2) can be carried out by regional ombudsman representatives.
- (7) The mechanisms and procedures for resolving complaints by the ombudsman are further regulated in the ombudsman regulations

This legal basis is the basis for the source of authority of the Ombudsman to issue Ombudsman recommendations as a source of law. In issuing recommendations, the Ombudsman does not issue recommendations when he receives a report. The first step that must be taken by the Ombudsman is to receive the report and examine the incoming report and as a preventive step, the Ombudsman can take the route of mediation or reconciliation as an initial stage in resolving the report on condition that both parties must agree to mediation and reconciliation. However, if an agreement cannot be reached between the two parties at the mediation and reconciliation stage, the next step is to issue a recommendation letter addressed to the reported

party to immediately improve the quality of public services in accordance with the suggestions and input provided by the Ombudsman in his recommendations.

The Ombudsman's recommendations are known for sanctions that are only administrative and not criminal sanctions. In fact, the Ombudsman of the Republic of Indonesia has an important function in guaranteeing the rights of Indonesian citizens to obtain administrative services public quickly and effectively. The facts on the ground are that state institutions at the Ministry level are still very negligent in implementing the recommendations given by the Ombudsman. The Ministry of Education and Culture is ranked first in the Ministry that most often ignores the recommendations of the Ombudsman of the Republic of Indonesia.

The recommendations issued by the Ombudsman of the Republic of Indonesia mean that there must be immediate improvements to the public service system. The Ombudsman of the Republic of Indonesia in its recommendations conveyed several points regarding the findings of maladministrative acts that had been investigated. The content of the recommendation is a description of the Ombudsman's recommendations regarding incoming reporting given to the Ombudsman. Incoming report obtained by the Ombudsman, explanation of the results of the examination, explanation of the form of maladministration action that was proven to have been carried out and conclusions and input from the Ombudsman of the Republic of Indonesia regarding steps that can be taken by the Reported Party as well as the Reported Party's superiors.

Article 36 of the Public Services Law explicitly orders administrators in the field of public services to manage complaints submitted including recommendations from the Ombudsman. The consequence of not implementing the Ombudsman's recommendations is that public services are not running optimally.

Furthermore, if the reported party and the reported superior do not implement the recommendations or only partially implement them for reasons that cannot be accepted by the Ombudsman, then Article 39 of the Ombudsman Law regulates that the Ombudsman can publish the reported superior and submit a report to the DPR and the president. Furthermore, the reported party and the reported superior who violate the provisions on the obligation to implement recommendations will be subject to administrative sanctions in accordance with the provisions of statutory regulations.

B. Forms of Ombudsman Recommendations as Legal Products according to the Indonesian Legal System

Before issuing a Recommendation to the reported party, the Ombudsman of the Republic of Indonesia has parameters to determine whether the report will be continued at the next stage, namely by identifying violations or administrative irregularities (Maladministration) committed by Public Service Implementers. Before mentioning the classifications of violations or administrative irregularities (Maladministration) committed by Public Service Executives, we need to know what is meant by Maladministration. Maladministration literally comes from the Latin "malum" (evil, bad, ugly) and "administrare" (to manage or serve), Maladministration means bad and ugly service or management.¹

Syntactically, the substance of Article 1 point 3 of Law no. 37 of 2008 concerning the Indonesian Ombudsman which provides a definition of Maladministration which can be described as follows:²

1. Behavior and actions against the law,
2. Behavior and actions exceed authority,
3. Using authority for purposes other than those for which it is intended. the purpose of that authority.
4. Negligence
5. Neglect of legal obligations;
6. In providing public services
7. Carried out by State and government administrators,
8. Causing material and/or immaterial losses,
9. For society and individuals.

Even though there are many different classifications of types of Maladministration, according to Sujata quoted by Mudji Estiningsih, in general a Maladministration is contrary to laws and regulations, even Sunaryati Hartono, Maladministration is an act in the form of Corruption, Collusion and Nepotism or an act that leads to to or can result in corruption.³

Recommendations are one of the legal products owned by the Ombudsman to resolve allegations of maladministration committed by Public Service Executives. Lexically, recommendation means consideration, advice and "suggestion" that recommends. Suggestions in English are called suggestions. However, the

¹ Ridwan HR dan Nurmalita Ayuningtyas Harahap, *Hukum Kepegawaian* (Yogyakarta: UII Press, 2018). p. 141

² Hendra Nurtjahjo, *Memahami Maladministrasi*, (Jakarta: Ombudsman RI, 2013). *Op.cit.*, p. 11

³ Mudji Estiningsih, *Fungsi Pengawasan Ombudsman Dalam Mewujudkan Pemerintahan Yang Baik (Studi Kasus Pemerintahan Daerah Istimewa Yogyakarta)* (Yogyakarta: Liberty, 2016). p. 41

Ombudsman's Recommendations are not just ordinary suggestions or advice given to public officials, because they contain noble human values.¹

In each process of preparing a Recommendation, the Ombudsman also considers the useful aspect of the Recommendation, whether it meets the subjective needs of the reporter for resolving the reported problem or will be useful in providing a deterrent effect for public officials so that they do not repeat acts of maladministration. The accuracy of the choice of type of Recommendation issued by the Ombudsman will greatly determine how public officials will act in responding to the Recommendation.²

There are several factors that determine the success of a Recommendation, including:³

- a. Quality or weight of the Recommendation. A good recommendation certainly explains clearly and concretely the problem being complained about, the complaint is supported by evidence and facts. The recommendation must be referred to the competent agency or official with the report so that the recommendation achieves its objectives.
- b. The content of the Recommendation always uses polite language and does not give the impression of convicting the Reported agency.
- c. Another determining factor is the attitude of the Reported Agency, to be willing to seriously take steps based on the Recommendations of the Ombudsman of the Republic of Indonesia and report the results as a form of cooperation in improving services to the community.

With regard to the types of recommendations implemented, it is important to note that there are 4 (four) types of Ombudsman recommendations commonly practiced, namely:

- 1) recommendations prepared to help resolve the reporter's problem;
- 2) recommendations that suggest imposing sanctions to provide and deterrent effect;
- 3) recommendations intended to prevent acts of maladministration from occurring
- 4) recommendations to change processes or systems that result in poor quality of public services.

These four types of Recommendations essentially have the same goal of realizing good government governance.⁴ Thus, the recommendation of the Ombudsman of the Republic of Indonesia is related to its duties as a public service supervisory institution which was established based on law to improve good governance and create an environment conducive to services in the form of fair laws, including eradicating and preventing Corruption, Collusion and Nepotism.⁵

Based on the opinion in the previous paragraph, in the author's opinion, the ideal Ombudsman recommendation is a recommendation that is formed by paying attention to,

1. Good Governance Principles

According to G.H. Addink the concept of good governance in the context of government is within the framework of the interaction of a government and its nation. From the Addink Concept, when connected to the concept of Ombudsman recommendations, it can be said that Ombudsman recommendations are one form of how the Indonesian government interacts (in terms of providing public services) with the nation or society. Therefore, in the context of an ideal recommendation, the Ombudsman must pay attention to the basic principles of good governance in forming it so that it can become a benchmark for changing an act/act of maladministration carried out by state/government/private administrators.

2. Principles of Public Service Delivery

In relation to the Ombudsman's recommendations, in the author's opinion, to form an ideal Ombudsman recommendation, you must also pay attention to the principles of public service delivery. This is based on the idea that poor public services will cause many problems including maladministration, therefore the higher the quality of the recommendations given, the better the quality improvement of the state/government administrators who have carried out maladministration.

3. General Principles of Good Government.

¹ Budhi Masthuri, *Mengenal Ombudsman Indonesia* (Jakarta: Pradnya Paramita, 2005). *Op.cit.*, p..7

² Ibid.

³ ibid

⁴ Dinny Wirawan Pratiwie, "Urgensi Keberadaan Ombudsman Republik Indonesia Dalam Rangka Mewujudkan Good Governance (Ditinjau Dari Undang-Undang Nomor 37 Tahun 2008 Tentang Ombudsman Republik Indonesia)," *Jurnal Ilmiah Hukum* 4, no. 1 (2012): 63–79. p.72

⁵ Nina Anggraeni, "OMBUDSMAN REPUBLIK INDONESIA (ORI) DAN PELAYANAN PUBLIK (Studi Kasus Analisis Putusan Rekomendasi ORI Dan Efektivitas Rekomendasi ORI)" (Universitas Muhammadiyah Surakarta, 2018). p. 8

It is one of the instruments used by the government in providing public services. The practice of maladministration occurs partly because the government administering public services does not pay attention to the AUPB which then becomes the object of reports or complaints from the public and then by.

The Ombudsman collects through quite long stages starting from receiving the report; report inspection; document and substantive examination where in this process the Ombudsman will determine whether the report received is an act of maladministration or not and then include it in the Audit Result Report (LHP); After these stages, the Ombudsman will try to resolve the complaint using the initial stages of Mediation and/or Reconciliation and if it is not followed up, it will reach the final process, namely the Resolution and Recommendation stage.¹

By paying attention to the complex stages before giving a recommendation (ultimatum remidium), in order to form an ideal recommendation, in my opinion you must pay attention to AUPB not only as good service but also covering all AUPB in order to minimize the occurrence of maladministration practices in the future after the recommendation is made. .

To make it easier to understand the third aspect above, the author tries to present a comparison table as follows:

Table 1. Comparison of Good Governance Principles, Public Service Principles and AUPB

Principles of Good Governance	Principles of Public Service Delivery	AUPB
1. Participation (participation)	1. Public interest	1. legal certainty,
2. Rule of Law	2. Legal certainty.	2. usefulness,
3. Transparency (transparency)	3. Equal rights,	3. impartiality,
4. Responsiveness	4. Balance of rights and obligations.	4. thoroughness,
5. Consensus Oriented (consensus oriented)	5. Professionalism,	5. do not abuse authority,
6. Equity	6. Participative,	6. openness,
7. Effectiveness and efficiency (effectiveness and efficiency)	7. Equality of treatment,	7. public interest, and
8. Accountability (accountability)	8. Openness,	8. good service
	9. Accountability,	
	10. Special facilities and treatment for vulnerable groups,	
	11. Punctuality, speed, convenience and affordability.	

If analyzed based on the table above, it can be said that these three foundations are basically these three aspects that have synergy with each other and have the same goal, namely to achieve good governance.

Recommendations arise as a result of maladministration and maladministration arises as a result of state administrators not adhering to the principles as previously described, so according to the author, to re-optimize the duties and functions of these institutions, Ombudsman recommendations are needed that pay attention to the three things above. By paying attention to the aspects above, in the author's opinion the recommendations given by the Indonesian Ombudsman will be more ideal. The ideal that is meant is not only procedurally good but substantively ideal in terms of quality. This is to ensure that the recommendations given can be implemented effectively and efficiently.

In the end, the Ombudsman Recommendation issued may have two aspects, namely as a punishment and also as a reward. Ombudsman recommendations that can result in punishment are when the recommendations issued are not followed up by the relevant institutions. The punishment intended is for the image of the institution concerned. For example, in the case of recommendations related to alleged maladministrative practices in a criminal act committed by the National Police/KPK/other institutions, then the relevant institution does not follow up on the recommendations submitted by the Ombudsman within a certain period of time and after passing the monitoring stage, the relevant institution will published as a consequence of not implementing the Ombudsman's recommendations and of course will have a negative impact on the image of the institution, whether it is bad stigma from the public, or a decrease in the level of trust in an institution. In the author's opinion, such conditions are a punishment for government institutions that are supposed to maintain public trust.

In the context of rewards, what needs to be understood is that an Ombudsman's recommendation has of course been thought through carefully and gone through a long process and several stages of completion. The recommendations issued by the Ombudsman do not contain sanctions for a government institution, but can serve as a guide for changing systems that have the potential to give rise to maladministrative practices through the opinions and suggestions contained in the recommendations. As has been explained in the discussion related to

¹ See Republic of Indonesia Ombudsman Regulation Number 58 of 2023 concerning Procedures for Inspection and Completion of Reports

the ideal form of recommendation, the ideal recommendation is to pay attention to the principles of Goog Governance, the principles of service delivery. *reward* bagi sebuah institusi yang menjalankannya dan dapat meminimalisir potensi terjadinya maladministrasi pelayanan publik.the public is also AUPB. When the recommendations prepared are ideal, this becomes a reward for the institution that carries them out and can minimize the potential for maladministration of public services.

C. Implementation of Ombudsman Recommendations as a Legal Product in an effort to improve public services

In practice, if an action, decision or incident of maladministration occurs, the Public Service Provider is obliged to immediately correct or provide compensation (if there are provisions regarding special adjudication), either through the advice or recommendation of the Ombudsman or at the initiative (ex officio) of the Public Service Implementer. itself. Based on the provisions of Article 38 paragraph (1) of the Ombudsman Law, basically every official is obliged to implement the recommendations issued by the Ombudsman.¹ The sad thing is that in reality this is not implemented by public service providers so it seems that the recommendations issued by the ombudsmen are ignored for various reasons.

Furthermore, to understand further regarding the practice of implementing recommendations, we will first present the number of recommendations that have been made by the Ombudsman from 2015 to 2024 in the following table:

Table 2. Comparison of the Number of Reports and Recommendations of the Indonesian Ombudsman

Year	Number of Reports/complaints	Number of Recommendations
2015	6.859	9
2016	9.069	6
2017	8.468	2
2018	10.067	3
2019	10.743	1
2020	14.049	1
2021	7.186	1

The data above is taken from the annual report issued by the Ombudsman every year from 2015 to 2024. Based on the data above, it can be seen that the number of reports/complaints related to public services tends to increase from year to year and only experienced a decrease in reports in 2017 , 2021, and 2024. This shows that the public service monitoring system carried out by the Ombudsman is running well and involves active participation from the public to obtain information related to public services.

This data also shows that the public is increasingly monitoring the government's performance in terms of implementing public services. However, it also needs to be understood that the more complaints are submitted to the Ombudsman, the more problems will arise in the practice of public services provided to the community. Apart from that, there is a large difference between the number of reports/complaints received by the Ombudsman and the recommendations issued by the Ombudsman. There have only been 34 reports/complaints that have reached the recommendation stage since 2015. This means that the majority of reports/complaints received by the Ombudsman were resolved before entering the recommendation stage. This is in accordance with the basic principles of the Ombudsman which prioritizes preventive measures in handling reports/complaints.

From 2015 to 2024 there were 34 recommendations issued by the Indonesian Ombudsman. Of the 34 recommendations, there are several recommendations that have not been implemented until now even though they have been around for a long time, including:

1. Maladministration in the equalization of overseas doctoral diplomas (S3) and the promotion of functional positions from lecturer to professor on behalf of JPAR by the Ministry of Research, Technology and Higher Education; (Published in 2018).
2. Maladministration in resolving problems in the administration of Lakidende University by the Minister of Research, Technology and Higher Education and the Coordinator of Private Higher Education Region IX; (Published in 2018)
3. Maladministration by the Minister of Research, Technology and Higher Education of the Republic of

¹ Hendra Nurtjahjo et.al, Memahami Maladministrasi, Ombudsman Republik Indonesia, Jakarta, 2013, hl., 8

- Indonesia in handling allegations of plagiarism of scientific work by Mr. MZF; (Published in 2018).
4. Maladministration regarding the non-fulfillment of registration of the transfer of ownership rights to land by the Head of the Bantul Regency Land Office, the Head of the Kulon Progo Regency Land Office, the Head of the Yogyakarta City Land Office, the Head of the Gunungkidul Regency Land Office, and the Head of the Sleman Regency Land Office; (Published in 2020).
 5. Maladministration in the transfer of Corruption Eradication Commission employees to become State Civil Service employees. (Published in 2021).

According to the latest report from the Chief Assistant for the Monitoring Resolution of the Indonesian Ombudsman, in 2024 there will still be government agencies that are reported to have not fully implemented the Audit Results Report and Recommendations of the Indonesian Ombudsman. So there is a need for commitment for agencies providing public services to comply with the products of the Indonesian Ombudsman.

Based on previous data and explanations, it can be said that there is still non-compliance with the Ombudsman's recommendations. This is an important note for state/government administrators in providing public services. Compliance with the Ombudsman's recommendations is an important aspect that must be considered in updating public services in accordance with the principles of good governance and general principles of good governance.

Public service is defined as providing services (serving) the needs of people or society who have an interest in the organization in accordance with the basic rules and procedures that have been determined. Furthermore, according to Ministerial Decree No. 63/KEP/M.PAN/7/2003, public is all service activities carried out by public service providers as an effort to meet the needs of service recipients and implement the provisions of statutory regulations. Thus, public services are to fulfill the desires and needs of the community by the administering state. The state was founded by society (society) of course with the aim of improving welfare society. In essence, the state, in this case the government (bureaucrats) must be able to meet the needs of the community. Needs in this case are not individual needs but various needs that are actually expected by society, for example the need for health, education, etc.

The characteristic of the Ombudsman is that the Ombudsman must resolve maladministration in persuasive ways, thus the Ombudsman not only acts as a "watch dog" who only monitors and imposes sanctions, therefore the Ombudsman must also partner with government agencies to carry out supervision and guidance with the aim of realizing prime quality public services. However, if the persuasive-partnership approach does not work properly, the Ombudsman also has other powers which are ultimum remedium, only used when persuasive coaching methods have reached a deadlock. Regarding this matter, administrative and criminal sanctions are also regulated. Administrative sanctions are imposed on the reported party and the reported superior who ignores/is not cooperative with the Ombudsman's resolution efforts, in the form of not attending summons, not answering clarifications and/or ignoring the Ombudsman's suggestions. Meanwhile, criminal sanctions apply to anyone who obstructs the Ombudsman in carrying out an inspection. These sanctions are packaged in recommendations that must be implemented by organizers and people responsible for public services, both central and regional.

Public services are still poor due to their implementation, the direct services provided to the community still seem slow and inefficient, which is a trigger for KKN. Legal action against criminal acts of corruption that has been carried out by law enforcement officials, namely, the Police, Prosecutor's Office and the Corruption Eradication Commission (KPK) will not be effective without efforts to prevent corruption and corruption through supervision of public services, so the presence of the Ombudsman of the Republic of Indonesia is in this effort. Maximizing independent external monitoring is considered necessary as a preventive measure that can be carried out to avoid corrupt behavior carried out by state administrators in developing their duties and functions as public services.

The supervision of the Indonesian Ombudsman is a representation of supervision carried out by the community or civil society groups. The way the Indonesian Ombudsman works is also similar to how civil society works, free of charge, and various other conveniences. Apart from being largely determined by the political will of state administrators and political support in parliament, the effectiveness of the work of the Indonesian Ombudsman is also largely determined by the extent to which the public has an understanding of the Indonesian Ombudsman, and the awareness of the need to voice practical practices and the public's courage to report lessons learned by state administrators. provide public services. Thus, the supervision carried out by the Indonesian Ombudsman is basically based on community supervision. Therefore, if the definition of public transparency according to the Indonesian public, transparency is openness that requires public participation since the beginning of its formation, the Indonesian Ombudsman places participation as a very important thing and is the key in monitoring its work.

The workings of the Indonesian Ombudsman include how and in what manner the Indonesian Ombudsman receives reports, the community administration research process, the process of compiling resumes, preparing requests for clarification up to the issuance of recommendations from the Indonesian Ombudsman.

One of the things that is being questioned by the public is how strong the recommendation issued by the Indonesian Ombudsman is for the reported party. Again, this cannot be measured as in a legal process or court

which can directly give a verdict of sanctions and execution against one of the parties who decides they are guilty. There is a big difference between an ombudsman and legal or court proceedings. Sanctions in the ombudsman process, especially regarding recommendations, do not lie with the Indonesian Ombudsman but with the public service providers themselves. For this reason, the ombudsman is often referred to as a magistrate of influence, an influence approach. However, there are other factors that make the Indonesian Ombudsman's recommendations effective, namely the leadership and firmness of the public service delivery institutions themselves.¹

Achieving excellent public services by regional governments is also mandated in Law Number 23 of 2014 concerning regional government. Article 351 of Law Number 23 of 2014 states that regional heads who do not implement the Ombudsman's recommendations will be "coached" by the Ministry of Home Affairs. Then there is also Government Regulation Number 12 of 2017 concerning Development and Supervision of Regional Government Implementation, where Article 37 states that sanctions are given to regional governments that do not implement the recommendations of the Indonesian Ombudsman, but to date no regional officials have been given sanctions by the government, if they do not implement the Ombudsman's recommendations. Even though the Indonesian Ombudsman has submitted a list of Ombudsman recommendations that have not been implemented.²

H. Closing

Based on the discussion as outlined in the discussion above, the author can conclude that:

1. The Ombudsman's recommendation is one of the legal products used as the final step (*ultimum remedium*) in resolving maladministration and improving public services in Indonesia, by the Ombudsman. The juridical basis for the Ombudsman's recommendations as a legal product is contained in the Ombudsman Law and also the Public Services Law, which are two laws that form the basis for the Ombudsman in issuing recommendations. Apart from that, there are several derivatives of related laws and regulations which further regulate the technicalities of making recommendations. However, in practice, these recommendations are often seen as mere suggestions that have no compelling power. This causes a low level of compliance with the Ombudsman's recommendations, even though legally these recommendations are binding and must be implemented in accordance with the Ombudsman Law and the Public.
2. The Ombudsman's recommendations are designed to include suggestions, corrective actions and investigation results that support improving the quality of public services. This form of recommendation is certainly very effective and aims to provide concrete solutions to maladministration problems in various sectors in order to create good governance and improve better public services. However, their effectiveness is often hampered by the lack of recognition of the legal force of the recommendations and the absence of strong direct sanctions for those who do not comply.
3. Implementation of the Ombudsman's recommendations still faces various challenges, including a lack of legal awareness and compliance from related parties. Without more effective monitoring mechanisms and authority to enforce implementation, these recommendations are difficult to optimize. This condition shows the need for legal reconstruction and a new approach to strengthen the role of the Ombudsman in realizing transparent, accountable and highquality public services.

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¹ <https://antikorupsi.org/id/news/rekomendasi-ombudsman-ri>, diakses tanggal, 28 Desember 2024.

² Tim Resolusi dan Monitoring, "Kepatuhan Penyelenggara Negara Terhadap Pengawasan Ombudsman RI," Ombudsman RI, 2019, <https://ombudsman.go.id/pengumuman/r/kepatuhan-penyelenggara-negara-terhadap-pengawasan-ombudsman-ri>.

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