



Follow-Up Recommendations of The Ombudsman of The Republic of Indonesia in Supporting Public Services

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A B S T R A C T

This study aims to determine the follow-up of the Ombudsman's recommendations and to find out the legal certainty of the follow-up of the Ombudsman's recommendations, especially regarding the recommendations that are not implemented. The research method used is normative juridical using a statutory approach and a conceptual approach. The data sources used are secondary data with primary, secondary, and tertiary legal materials as well as non-legal materials. The data obtained will be analyzed qualitatively. The results of the study show that: first, the follow-up of the Ombudsman's recommendations is carried out in three ways, there are: 1) Submit a report to the President, 2) Submit a report to the DPR, 3) Publish the Reported Party/Supervised Reported Person who does not comply with the recommendations to the media. After this stage, the task of the Ombudsman is considered complete even though the recommendations have not been implemented. The authority to further follow up on the recommendations that do not adhere is then left to the policies of the President and the DPR. second, for the Ombudsman, legal certainty for the Whistleblower in the context of implementing the recommendations has been carried out, because the process of completing the report has been completed, but after the recommendations are submitted to the President and the DPR there is no time clarity and certainty whether the recommendations that are not implemented will adhere or not.

INTRODUCTION

This study will discuss the follow-up to the Ombudsman's recommendations and legal certainty from the follow-up carried out by the President and the House of Representatives (DPR) on the recommendations of the Ombudsman of the Republic of Indonesia. Indonesia as a country that bases itself on the concept of the State of Law (Rechtsstaat), in the course of its history has experienced various developments in the field of state administration. This also includes developments in the field of supervision. The presence of existing supervisory institutions, both within the government such as the Inspectorate General, and those outside the government, such as non-governmental organizations, is considered to still have many shortcomings. (Nurdin, 2021) Sehingga untuk merespon perkembangan masyarakat yang cenderung lebih sensitif dan reaktif, maka diperlukan sebuah instrumen pengawasan yang responsif, dapat bekerja secara independen tanpa pengaruh lembaga negara lain, serta dapat menjadi wadah untuk memfasilitasi masyarakat dalam mengawasi pemerintah. Sehingga, aspek partisipasi dan pemberdayaan masyarakat dapat lebih terjamin. Namun, secara bersamaan lembaga ini harus tetap mempunyai pengaruh yang kuat (A, 2019; Sujata, 2002)

Salah satu permasalahan yang paling mendasar dalam sistem ketatanegaraan adalah terkait pelayanan publik yang diselenggarakan oleh penyelenggara negara. Tuntutan perbaikan birokrasi dan pelayanan publik mulai gencar disuarakan pasca reformasi tahun 1998. Mengingat bahwa sebelum itu, ketatanegaraan Indonesia diwarnai dengan praktik korupsi, kolusi dan nepotisme yang mengakar (Akim, 2021; Pramukti, 2016) Therefore, one of the most basic agendas that immediately sought to improve was the amendment of the 1945 Constitution

as a basis for improving and responding to all demands at that time and improving the working system of the government bureaucracy which had begun to lose the trust of the public. The Ombudsman then comes to answer this challenge. As a public service supervisory agency. The Ombudsman is expected to be able to encourage the acceleration of bureaucratic reform to create a better government (good governance) (Ombudsman of the Republic of Indonesia, 2009; Sujata, 2002)

Article 1 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia provides the understanding of the Ombudsman as "a state institution that has the authority to oversee the implementation of public services both organized by State Administrators and the government, including those held by State-Owned Enterprises, Regional-Owned Enterprises and State-Owned Legal Entities and Private Entities or individuals assigned the task of administering certain public services whose funds are partly or wholly sourced from the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget".

The final product of the Ombudsman is a recommendation, namely "conclusions, opinions and suggestions prepared based on the results of the Ombudsman's investigation, to the Reported Party's Superior to be implemented and/or followed up to improve the quality of good government administration". According to Agus Wijaya, the Head of the Ombudsman of the Republic of Indonesia for East Java, stated that "the level of compliance of government institutions in implementing the recommendations of the Ombudsman of the Republic of Indonesia is very low, over the last few years only 40% of the recommendations of the Ombudsman have been complied with, the rest ignore these recommendations"(Widiyanto, 2014) The chairman of the Ombudsman of the Republic of Indonesia for the

2016-2020 period, Amzulian Rifai, also acknowledged this deficiency by stating that so far the recommendations given by the Ombudsman have often been ignored by several institutions. The most important obstacle is the level of compliance of state institutions with the recommendations issued by the Ombudsman (Widianto, 2014).

Ombudsman released a report in 2019 regarding the level of compliance of state institutions with the recommendations issued by the Ombudsman of the Republic of Indonesia from 2014 to 2018. 12 recommendations were implemented, namely 35.29%, 12 recommendations were partially implemented, namely 35.29%, and 10 recommendations were not implemented, or 29.41% (RI Ombudsman, 2019). Recommendation of the Ombudsman which is not complied with by the Reported Party and the Reported Party's Superior, by Article 38 paragraph (4) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia provides room for final settlement by giving authority to the Ombudsman to submit reports to the President and DPR and publish the Reported Party/Superintendent Reported to the media. Article 28 paragraph (2) letter d of the Ombudsman Regulation of the Republic of Indonesia Number 48 of 2020 concerning Amendments to the Regulation of the Ombudsman of the Republic of Indonesia Number 26 of 2017 concerning Procedures for Receiving, Auditing, and Completing Reports, states that "Reports can be closed at each stage of completion if the recommendation has not been implemented and has been published or has been reported to the House of Representatives and the President". If you look closely, this regulation implies that the final resolution of a maladministration problem only comes to the authority to report to the President and the DPR and to be published in the media. However, how can the efforts be more concrete and real, both the Ombudsman through his recommendations, as well as the President and the DPR to follow up on these recommendations so that there is a certainty. So that the findings of maladministration and actions of state officials who do not want to comply with the recommendations can be implemented and obeyed.

This fact has proven that there is a gap between expectations and reality, in which the Ombudsman with the initial enthusiasm of its formation is expected to be able to complete the expectations of Article 34 paragraph (3) of the 1945 Constitution, namely "The State is responsible for providing health service facilities and proper public service facilities" with one of the following: how to attend the Ombudsman Oversight Institute to accelerate the improvement of the bureaucracy through the improvement of good public services. However, at the same time, the authority to settle problem reports provided for in Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia and other legal instruments seems to be given half-heartedly.

Based on the results of observations of various literature and research related to the title of the follow-up to the Ombudsman recommendation specifically, no one has conducted this research. Research that has been carried out previously and has a connection with this research, Nuryanto A Daim's research (2014), examines the legal strength of the recommendation. Ombudsman in solving maladministration. Then Nina Anggraeni (2018) focuses her study on the role of ORI in resolving public service disputes in Indonesia from reporting to holding the issuance of recommendations and the effectiveness of recommendations. Furthermore, Aldila Ridho (2014) discusses

the legal position of the recommendation in its function as a supervisory agency. Imron Riski A (2018) focuses on the problem of weak recommendation strength. Similar research was also conducted by Iga Sukma Devi, FC Susila Adiyanta, and Nabilatus Sa'adah, (2019) The research focuses on recommendation number 009/Rek/0084.2012/PBP.02/VII/2013 but does not specifically discuss follow-up procedures systematically from the President or the DPR on recommendations that are not adhered to until the recommendations are implemented. However, the various studies above do not discuss or specifically examine how to follow up after the recommendations are reported to the President or the DPR. however, it does not specifically discuss systematic follow-up procedures from the President or the DPR on recommendations that are not adhered to until the recommendations are implemented. However, the various studies above do not discuss or specifically examine how to follow up after the recommendations are reported to the President or the DPR. however, it does not specifically discuss systematic follow-up procedures from the President or the DPR on recommendations that are not adhered to until the recommendations are implemented. However, the various studies above do not discuss or specifically examine how to follow up after the recommendations are reported to the President or the DPR. Therefore, the purpose of this study is to find out the follow-up to the Ombudsman's recommendations and to find out the legal certainty of the follow-up to the recommendations of the Ombudsman of the Republic of Indonesia.

METHOD

The method used in this research is normative juridical using a statute approach and a conceptual approach. The reason for using this approach is because this research focuses on the follow-up actions that can be taken after the issuance of the Ombudsman Recommendation in terms of a positive legal review and the existence of a legal vacuum that regulates the follow-up to the recommendations of the Ombudsman of the Republic of Indonesia. -the views of scholars or legal doctrines. Sources of data used are secondary data with three legal materials, namely: 1) primary legal materials such as legislation, 2) secondary legal materials, namely books, legal journals, Ombudsman reports and interviews using a list of questions (interview guide), 3) Tertiary legal materials such as legal dictionaries and encyclopedias, as well as other non-legal materials. The data obtained will then be analyzed qualitatively by describing the data and facts found deductively.

RESULTS AND DISCUSSION

Overview of the Recommendations of the Ombudsman of the Republic of Indonesia

The Ombudsman is an obligation in a legal state that carries a democratic system, where public transparency is the main prerequisite. Furthermore, the consequence of choosing the rule of law as the frame of Indonesia's state administration is no longer solely fixated on the model of the separation of powers (Trias Politica) version of John Locke or Montesquieu to run the wheels of government. Instead, the three branches of power (legislative, executive, judicial) and organs supporting state institutions, must touch each other and then monitor each other and control based on the principle of checks and balances to avoid concentration in one area of power (Asshiddiqie, 2006b; Muttaqin, 2015)

The Ombudsman of the Republic of Indonesia as a state institution whose position is not within the realm of any branch of power has positioned itself as an auxiliary state institution (auxiliary institutional constitution), namely a state institution that is determined to carry out state functions for the realization of state goals (Tutik, 2008). As a state institution whose authority is given directly by law, the Ombudsman has the function of supervising the implementation of public services by having a final product in the form of recommendations. This institution places the final product as an "Ultimum Remedium" or last resort in solving problems. (Bahtiar, 2017) Therefore, the number of recommendations issued by the Ombudsman is not as much as the number of reports submitted to the Ombudsman.

Over the last 5 (five) years the number of recommendations issued by the Ombudsman has only amounted to 13 recommendations, with the implementation status as follows:

Table 1. Ombudsman Recommendation Status 2016-2020

Classification	2016	2017	2018	2019	2020
Held	1	1	0	0	0
Partially Implemented	4	1	0	1	0
Not implemented	1	0	3	0	1

Several types of recommendations are commonly issued by the Ombudsman, namely: 1) Recommendations that are prepared to help solve problems, this type of recommendation does not prioritize suggestions for imposing sanctions or improving the service system but focuses on resolving problems between the Reporting Party and the Reported Party quickly such as, speeding up services, conveying apologizing, considering decisions made, providing explanations, explaining considerations, providing leniency or providing compensation; 2) Recommendations drawn up to prevent maladministration from occurring, this type of recommendation is preventive to prevent conflicts of interest and prevent intervention from certain people; 3) Recommendations for changing processes or systems, (Masthuri, 2005)

The legal power of the Ombudsman recommendation after the enactment of Law Number 37 of 2008 is 1) The Ombudsman recommendation has legally binding force, meaning that the Reported Party/Supervised of the Reported Party is obliged to carry out the Ombudsman recommendation, and if it is not implemented, administrative witnesses can be imposed according to the provisions legislation; 2) The Ombudsman's recommendation has the power to bind morally (morally binding) meaning that the recommendation prioritizes efforts to improve the awareness of state administrators in providing public services. (Masthuri, 2005); 3) The Ombudsman's recommendation has politically binding power, this can be seen from Article 38 paragraph (4) of Law Number 37 of 2008, that the Ombudsman's recommendation is not only reported to the President but also reported to the DPR and publishes it to the media to provide information. pressure from social witnesses from the community if the Reported Party/Supervised of the Reported Party does not comply with the Ombudsman's recommendation (Yasin, 2016); 4) The Ombudsman recommendation has evidentiary power, based on its authority as contained in Article 8 paragraph (1) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, 5) The Ombudsman recommendation has executorial power, meaning

that the execution of the Ombudsman recommendation adheres to the principle of self-respect with a floating system execution, namely the authority to carry out a decision that has permanent legal force, is completely left to the competent authority or official, without any intervention by the authority of the Ombudsman to impose sanctions (A.Daim, 2016).

The follow-up to Ombudsman Recommendations

Recommendations are the final product of the Ombudsman's supervisory agency, which ideally hopes to be complied with to achieve the goal of accelerating bureaucratic improvement through good public services, as the ideals of reform are the forerunner to the establishment of the Ombudsman's supervisory agency. Therefore, the issuance of a recommendation alone is not enough, there is a need for follow-up efforts to ensure that the recommendations submitted are fully and truly adhered to.

As a final product, before issuing recommendations, several steps are needed which can be seen in the diagram below!



Figure 2. The flow of report/complaint settlement

Source: www.Ombudsmanrisusel.blogspot.com

Based on the picture above, it can be seen that the completion of the report is carried out in several stages, namely: 1) Input/receive reports; 2) Report selection process and inspection process; 3) Output, the final result can be: a) Agreement if the examination process is carried out through mediation/conciliation, b) Decision if the examination process is carried out through special adjudication, and, c) Recommendation if the examination process is carried out by field investigation and systemic review. All outputs produced by the Ombudsman will be monitored to ensure whether they are implemented or not. Furthermore, if the output in the form of "agreement" and "decision" is not implemented, the Ombudsman will issue a recommendation.

The follow-up to recommendations can be in the form of 1) If the recommendations are implemented, the report will be closed with the status implemented; 2) If the recommendation is partially implemented for acceptable reasons, the report will be closed with the status of the report being implemented with acceptable reasons, 3) If the recommendation is partially implemented for unacceptable reasons or the recommendation is not fully implemented, the report will be closed by providing a recommendation report. to the President, DPR and publish the Reported Party/Superior reported to the media.

Follow-up on recommendations that are not complied with by submitting reports to the President and DPR, begins with the

preparation of a team of assistants as the basis for submitting the determination of the status of the implementation of the Ombudsman's recommendations to the Ombudsman leadership. After that, the report can be submitted to the President and the DPR along with proposing the imposition of witnesses for state officials who do not implement the recommendations. At this stage, the Ombudsman's authority is declared to have been completed in carrying out its duties and functions. Furthermore, the authority to follow up on recommendations to be complied with is given fully to the President as the highest superior of state administrators and to the DPR to be followed up through the mechanism of supervisory authority attached to the functions of the DPR. Follow-up that can be done by the President is to follow as suggested in the recommendations of the Ombudsman by the applicable laws and regulations. One of them is Article 351 paragraph (5) of *Law Number 23 of 2014* concerning Regional Government which confirms that: "Regional heads who do not implement the Ombudsman's recommendation as a follow-up to public complaints are given sanctions in the form of special guidance for deepening in the field of government carried out by the ministry as well as other duties and the authority is exercised by the deputy regional head or appointed official, while the authority of the witness giving official is exercised, as regulated in Article 82 of *Law Number 30 of 2014* concerning Government Administration.

Efforts to optimize compliance with recommendations in Indonesia, which adheres to a presidential system of government by creating checks and balances through a system of reporting the results of recommendations to the two areas of power (executive and legislative) in the scheme are considered appropriate. In addition, the Ombudsman is given the authority to publish the Reported Party / Reported Supervisor to the media, in the hope of being able to influence public opinion. Thus, it can pressure the government that does not adhere to the decision or recommendation to accept and implement it. Even though efforts to accelerate public services are still running slowly, as stated by Rudi Ismawan SH, M. The granting of authority implicitly by law to the President and the DPR to follow up on the Ombudsman's recommendations which are not complied with without being provided with detailed rules creates new problems. One of them is the question of whether there is legal certainty for the Reporting Party that recommendations with the status of not being implemented will be followed up quickly by the President and the DPR.

Legal Certainty Ombudsman Recommendations

As a country that places itself as a state of law. Indonesia bases itself on two main principles, namely the principles of guaranteeing and protecting human rights and the principles of an independent and impartial judiciary (Hamid, 2016).

According to Sri Soemantri (1992) In a state of law, it must have four things, namely: 1) The government in carrying out its duties and obligations must be based on laws or statutory regulations; 2) There is a guarantee of human rights (its citizens); 3) There is a division of power within the state and 4) there is supervision from judicial bodies. According to Jimmy Asshiddiqie (2006a), The applicable state of law must have twelve main principles which are the main pillars of the establishment of a modern state in the sense of a real state of law, namely: 1) The supremacy of law; 2) Equality in law; 3) The principle of legality; 4) Limitation of power; 5) Independent executive organs; 6) The

judiciary is free and impartial; 7) State administrative court; 8) Constitutional Court; 9) Human Rights Court; 10) Democratic; 11) Serves as a means of realizing the goals of the state, and 12) Transparency and social control.

As a derivative of this basic concept of a rule of law, then the regulation of guarantees for public services is regulated explicitly in Article 34 paragraph (3) of the 1945 Constitution which states that "The state is responsible for providing adequate health care facilities and public service facilities". The responsibility of the state and government in ensuring that its citizens can be served well through the administration of services carried out by government officials is the starting point for why public services must be supervised (Primary, 2021). According to Gustav Radbruch, the law must contain 3 (three) identity values, namely as follows. 1) The principle of legal certainty (*rechmatigheid*), this principle is reviewed from a juridical point of view; 2) The principle of legal justice (*gerechtigheid*), this principle reviewed from a philosophical point of view, where justice is equal rights for all before the court; 3) The principle of legal benefit (*zwechmatigheid*) or *doelmatigheid* or utility (Rahardjo, 2012). In enforcing the law, the elements of legal certainty, expediency, and justice must be considered. These three elements in the process must receive equal or balanced attention. Although in practice it is not easy to compromise in a balanced way these three elements (Julyano & Sulistyawan, 2019; Nasir, 2017)

Certainty in service is something that must be done, there are three indicators of community satisfaction in managing complaints, namely: 1) The report/complaint is followed up; 2) The subscription process does not take a long time and 3) Completion of reports/complaints is in line with expectations. Among the three indicators, the certainty of time in the completion of the report is the most important (Fither, 2021). Article 28 Paragraph (4) of *Law Number 37 of 2008* concerning the Ombudsman of the Republic of Indonesia states "If the Reported Party and the Reported Party's superiors do not implement the Recommendation or only partially implement the recommendations for reasons that are unacceptable to the Ombudsman, the Ombudsman may publish the Reported Party's superior who does not carry out recommendations and submit reports to the House of Representatives and the President". In line with that, it is also stated in Article 28 paragraph (2) letter d of the Ombudsman Regulation of the Republic of Indonesia Number 48 of 2020 concerning Amendments to the Ombudsman Regulation of the Republic of Indonesia Number 26 of 2017 concerning Procedures for Receiving, Auditing, and Completing Reports,

Based on the results of an interview with the Chief Assistant for Resolution and Monitoring of the Ombudsman of the Republic of Indonesia, the follow-up action that can be taken by the Ombudsman on recommendations that are not complied with is limited to submitting a report to the president and the DPR, along with proposing sanctions. At the same time, the obligation of the Ombudsman in completing the report has been completed. This means that further follow-up is left to the policies of the President and the DPR. Follow-up efforts through publication to the media were also deemed not strong enough to bind socially and politically. The use of the word "can publish" in its regulations has given rise to the interpretation that the Ombudsman is free to publish or not to publish recommendations that are not complied with by the media. As explained in *Appendix II Number 267, Law Number 12 of 2011*

concerning the Establishment of Legislation in providing techniques for drafting laws and regulations explains the interpretation of the word "can" as "to state the discretionary nature of an authority granted to a person or institution, use the word can". In other words, the Ombudsman is free to determine the follow-up of the Reported Party's non-compliance with recommendations through publication or not. If viewed carefully in terms of the effectiveness of law enforcement, the publication mechanism as mentioned in Article 38 Paragraph (4) of Law Number 37 of 2008 and Article 41 Paragraph (6) of the Ombudsman Regulation of the Republic of Indonesia Number 26 of 2017, shows that the mechanism has progress unpredictable (A. Setiawan, 2019). This of course becomes difficult to provide guarantees of justice, legal certainty, and legal benefits to the community.

Recognizing this deficiency, the Ombudsman is then committed to providing legal certainty in terms of clarity of report completion time. This is stated in the decree of the Chairman of the Ombudsman Number 67 of 2020 and also Ombudsman Regulation 48 of 2020 by determining the classification of community reports, namely: simple reports with a maximum time limit of 60 calendar days, medium reports 120 calendar days, and heavy reports 180 calendar days (Fither, 2021). However, the obstacles experienced by the Ombudsman in providing certainty of the completion time of reports are also not the only problems that exist in this institution. From the receipt of the report until the stage of issuing a recommendation by the Ombudsman. It seems that compliance with the Ombudsman's recommendations has its problems in providing legal certainty. In particular, legal certainty for Whistleblowers who from the beginning hoped that their complaints could be resolved quickly and accurately. The follow-up provided by law as an effort to resolve is not able to guarantee certainty that recommendations that are not adhered to will be implemented after the Ombudsman's report is submitted to the President, DPR, and published to the media. Supervision of the "soft" control model put forward by the Ombudsman (GA Setiawan, 2017), maybe more acceptable if the main goal is not to provide legal certainty. However, it is more oriented towards personal improvement by encouraging the awareness of state administrators to provide public services to the third level of compliance, namely Internalization where at this stage a person obeys the law because it is under the values he adheres to regardless of the influence of power holders and supervision and fear of sanctions. (Soekanto, 1982)

CONCLUSION

Based on the research above, it can be concluded that:

1. The follow-up to the Ombudsman's recommendations is carried out in several ways, namely: 1) If the recommendations are implemented or not implemented for reasons acceptable to the Ombudsman, the report will be closed with the status implemented and partially implemented for acceptable reasons; 2) If the recommendation is not implemented or partially implemented for reasons that cannot be accepted by the Ombudsman, then the recommendation will be followed up by submitting a report to the President, DPR and can also be published to the media.
2. Legal certainty of the follow-up to the Ombudsman's recommendation has been sought by determining the

deadline for completing the report. However, at the level of follow-up carried out by the President and DPR, there is no legal certainty in the sense that there is no certainty of completion time and there is no certainty whether the recommendations will be implemented or not.

Based on the conclusions above, the researchers suggest that:

1. It is hoped that the Ombudsman's authority will not stop at providing reports to the President and DPR but can also be involved in being involved in monitoring the follow-up carried out by the President and DPR, and it is hoped that they Ombudsman can be involved in the early stages of the process of making rules and making policies to avoid non-compliance by state officials.
2. More detailed rules are still needed to concretize the follow-up actions that must be taken by the President and the DPR regarding the recommendation report submitted by the Ombudsman to provide legal certainty.

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