

SAFEGUARDING GOOD GOVERNANCE: EXPLORING THE ROLES OF THE OMBUDSMAN AND CORRUPTION ERADICATION COMMISSION IN UPHOLDING PUBLIC SERVICE INTEGRITY

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Abstract

The welfare state model has significant implications, primarily evident in extensive government intervention in various aspects of people's lives and the exercise of discretion by government agencies. However, the discretion of public officials often leads to maladministration in public service delivery, raising concerns regarding responsibility and accountability. In this context, the roles of the Ombudsman and the Corruption Eradication Commission (KPK) emerge as crucial in supervising public service implementation to uphold principles of good governance, ensuring transparency, honesty, and freedom from corruption, collusion, and nepotism. This research aims to elucidate the synergies between the Ombudsman and the KPK in combating corruption and maladministration. Employing a doctrinal method encompassing statutory, conceptual, and case analyses, the study reveals that maladministration stems from deviations in providing public services without adhering to proper standards, leading to various irregularities such as delays, procedural lapses, abuse of authority, and discrimination. Furthermore, criminal acts of corruption often involve bribery, procurement irregularities, money laundering, obstruction of justice, and illegal levies. The findings underscore the pivotal roles of the Ombudsman and the KPK in fostering clean and accountable governance, essential for ensuring integrity in public service delivery.

Keywords: Maladministration, Discretion of Public Officials, Ombudsman, Corruption Eradication Committee.

1. INTRODUCTION

Discretion concerning public services is based on the public administration paradigm, initially limitedly studied in the Old Public Administration (OPA) paradigm. Furthermore, the New Public Management (NPM) paradigm emerged, where discretion began to be given widely, but abuse occurred. This has led to a paradigm shift in the study of discretion through the New Public Service (NPS) paradigm, where discretion is still needed but is limited and must be exercised responsibly (Denhardt & Denhardt, 2003). Discretionary authority, as one of the internal factors of public officials, has a solid relationship of urgency with public services and dramatically influences the quality of public services.

In state government positions, the work environment is permanently attached to the authority to carry out government affairs, namely all state duties besides the areas of lawmaking and justice - *elke werkzaamheid van de overheid, welke niet als wetgeving of als rechtspraak is aan te merken* (Versteden, 1984).

The logical consequence of discretionary action is in the field of statutory regulations. It is the transfer of legislative power to Government bodies. Thus, in certain circumstances and certain portions and levels, the Government can issue statutory regulations. Moreover, Government Agencies/Officials are also given *droit function* authority, meaning the power to interpret statutory regulations, but the Government cannot act arbitrarily. The government is prohibited from carrying out actions that are

detournement de pouvoir (doing something outside the objectives of the authority given) or *onrechmatige overheidsdaad* (acts against the law by the authorities), which result in a lawsuit being filed in court.

According to Law No. 25 of 2009 on Public Services, service standards serve as benchmarks used as guidelines for the provision of services and as references for assessing service quality. They are the obligation and promise of service providers to the public in delivering quality, fast, easy, affordable, and measurable services. Public service standards should include legal bases, requirements, systems, mechanisms and procedures, completion deadlines, costs/tariffs, service products, facilities, infrastructure, and/or amenities, staff competencies, internal supervision, complaint handling, advice, and feedback, the number of service providers, assurance of service according to standards, commitment to providing a sense of security, freedom from danger, and uncertainty, and performance evaluation of service providers.

In Indonesia, the establishment of Law Number 30 of 2014 concerning Government Administration has provided an answer regarding the existence of legal certainty in the use of discretion by government bodies as providers of public services. Discretion in public services is needed to create effective and efficient public services. Law no. 30 of 2014 has regulated discretionary requirements, namely that they must be by the discretionary objectives. The provisions of Article 22 of Law No. 30 of 2014 regulate that the use of government discretion is to facilitate government administration, fill legal gaps, provide legal certainty, and overcome government stagnation in certain circumstances for the benefit and public interest, and does not conflict with the rules, by the principles - general principles of good governance, based on objective reasons, not giving rise to conflicts of interest, and carried out in good faith.

The exercise of discretion also needs to pay attention to procedures for using discretion that can be accounted for morally and legally (Article 26 of Law Number 30 of 2014). If discretion is not by applicable regulations, it will generate legal consequences. The discretion becomes invalid (Article 32 of Law No. 30 of 2014).

2. MATERIALS AND METHODS

This research uses a normative (doctrinal) approach. Doctrinal research is based on legal regulations, concepts, and case approaches (Marzuki, 2013). It prioritizes legal materials as secondary data collected through a literature review (Natalis et al., 2023). The steps were carried out through primary (legislative regulations) and secondary (to search for other materials or expert analysis) literature searches, searching for legal theories related to administrative law, especially regarding the discretionary legal responsibilities of public officials in providing public services. It observes legal regulations using the interpretation method by looking for conformity between existing legal principles and the problems being researched, carrying out a descriptive analysis of positive law related to the problems to be researched through reasoning from legal theories, and paying close attention to the content of positive law (Churchil, 1994). Data analysis was carried out descriptively and qualitatively and explained through non-statistical linguistic arguments and separate sentences according to a category to conclude. The pattern of thinking used was deductive, namely an analysis process that departs from a general mission and style of thinking or a pattern of thinking that is taken based on general data and then applied to specific conclusions after first carrying out categorization.

3. RESULTS AND DISCUSSION

3.1 The Concept of Maladministration and Discretion

In general, maladministration is behavior or acts against the law and ethics in a public service administration process. Maladministration highlights the behavior of officials in carrying out government and public service duties. Measures of action are associated with the norms of behavior of the authorities.

Conceptually, a distinction must be made between the norms of behavior of officers and the norms of government. Official behavioral norms are aimed at actions that can be qualified as acts of maladministration, while government norms are aimed at the legality of government actions (Djatmiati, 2012). The forms of maladministration vary significantly from theoretical and juridical aspects according to the legal system of each country.

The scope of Maladministration, as stated in the provisions of Article 1 point 3 of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, is stated as: "conduct or acts against the law, exceeding authority, using authority for purposes other than those for which the authority is intended, including negligence or neglect of legal obligations in the implementation of public services carried out by State and government administrators." cause material and immaterial losses to society and individuals."

Viewed from administrative law, the scope of maladministration mentioned in Article 1 point 3 will cause difficulties in determining responsibility, namely whether it is personal or official responsibility, and about the court's competence.

One of the source's causing maladministration is the low capability, competence, and adequate knowledge of government administrators. This is interpreted as a need for more competencies. The manifestation of this lack of competencies is the quality of public services that are unresponsive, unempathetic, unreliable, and have no guarantees (Nugraha, 2008).

In line with the adoption of the welfare state concept, government administrators or state administration are burdened with the task of serving the public interest and the obligation to realize general welfare (*bestuurszorg*), in the implementation of which government administrators intervene heavily in the lives of citizens. Government intervention in carrying out public missions often results in losses for certain parties, both directly and indirectly, especially when given broad authority through discretion (Basah, 1997). Discretion is defined as a means that provides space for officials or state administrative bodies to take action without having to be entirely bound by the law or actions that are carried out by prioritizing the achievement of goals (*doelmatigheid*) rather than by applicable law (*rechtmatigheid*) (Ridwan, 2009).

According to the Law Dictionary, discretion is the freedom to make decisions in every situation faced according to one's own opinion (Simorangkir, 2008). Meanwhile, according to Law Number 30 of 2014 concerning Government Administration, discretion is defined as a decision or action determined or carried out by a Government Official to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, not regulating, incomplete or unclear, or there is government stagnation.

3.2 Limits of Discretion and Legal Accountability of Government Officials in Providing Public Services

The concepts of personal error and official error in government actions are fundamental to determining whether the error is personal or official responsibility. Personal responsibility is related to the functionalist approach or behavioral approach. In administrative law, personal responsibility concerns maladministration in using authority in public services. Using authority here includes government actions according to the provisions of laws and regulations and establishing policies or discretion.

Regarding personal responsibility, the principle of "Superior Responsibility" is not known - superiors are responsible for the actions of subordinates (Djatmiami, 2012). The parameters of government functions used for personal responsibility are measured by the norms of good governance and the norms of behavior of officials.

Position responsibilities relate to the legality (legitimacy) of government actions. The legality of government actions in administrative law concerns the approach to government power. The power approach relates to the authority law grants based on the principle of legality or *rechtmatigheid* (Hadjon, 2012).

This approach determines the supervision of the use of power. Suppose there is a deviation or violation of the use of power by the government. In that case, the state's responsibility is carried out based on the principle of legality (*rechtmatigheid*), both formal and material legality. Formal legality is related to authority and procedures, while material legality is related to objectives.

Substantial legality that relies on the principle of purpose is known as "*specialiteit beginsnel*." It means that every authority contains a purpose. Administrative law literature has long known the principle of "*zuiverheid van oogmerk*" (sharpness of direction and purpose). Violating the principle of purpose can lead to "*detournement de pouvoir*" (Kobusen, 1991).

Limitations to prevent arbitrariness by government officials in the use of discretion are regulated in Article 23 of Law No. 30 of 2014 concerning Government Administration, namely:

- a. Making decisions and actions based on the provisions of laws and regulations which provide a choice of decisions and actions;
- b. Making decisions and actions because laws and regulations do not regulate them;
- c. Making decisions and actions because statutory regulations are incomplete or unclear; and
- d. Making decisions and actions due to government stagnation for broader interests.

Government officials who use discretion must meet the requirements under the purpose of the discretion, not conflict with the provisions of laws and regulations, by the general principles of good governance (AUPB), based on objective reasons, not giving rise to a conflict of interest, and carried out in good faith. (Article 24).

3.3 The Role of the Ombudsman and the Corruption Eradication Commission in Public Services

There is a point of intersection in implementing the duties carried out by the Ombudsman and the Corruption Eradication Commission (KPK), namely that they both create state and government administration free from corruption, collusion, and nepotism. The difference only lies in focus. Namely, the Ombudsman focuses on public services, while the Corruption Eradication Commission focuses on eradicating corruption. Perfection in public services can prevent corruption, collusion, and nepotism. Therefore, the Ombudsman and the Corruption Eradication Committee must support each other. Cooperation in the context of optimizing efforts to eradicate corruption and supervise the implementation of public services needs to be built and developed by both institutions. Collaboration between the Ombudsman and the Corruption Eradication Commission in eradicating corruption and monitoring public services has been carried out and stated in the form of a Memorandum of Understanding since March 20, 2019.

This collaboration will benefit the two institutions positively because their collaboration will support each other in carrying out their respective duties and functions. The Corruption Eradication Commission and the Ombudsman will exchange information and data. Suppose the Corruption Eradication Commission handles reports/complaints from the public that are indicated or suspected to be maladministration. In that case, they will be handed over to the Ombudsman. In contrast, if the report handled by the Ombudsman indicates an alleged violation of a criminal act of corruption, it will be handed over to the Directorate of Complaints of Corruption Eradication Commission.

Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia in Article 2 also regulates that the Ombudsman is an independent state institution and does not have organic relationships with other state institutions and government agencies.

In carrying out its duties and authority, It is free from interference from other powers. Likewise, based on Law Number 30 of 2002 concerning the Corruption Eradication Commission, the Corruption Eradication Commission is also declared an independent state institution.

The Ombudsman as an institution that has the character of a "magistrate of influence" in carrying out its duties is more:

- a. Maintaining human dignity: prioritizing recommendations (voluntary corrective action) over the imposition of sanctions, maintaining confidentiality except to protect public interests;
- b. Adhering to active stelsel: proactive in finding evidence, having the right to initiative but based on the public interest and preventing further damage;
- c. Accommodating informality: Even though it is strongly oriented towards facts, it encourages resolution efforts through an informal and persuasive approach without violating regulations and propriety;
- d. Wise treatment: encouraging adherence to standards and procedures but opening up space for affirmation for groups marginalized by applying standards and standard procedures.

Table 1: Public Report Based on Alleged Maladministration 2023

No.	Report Form	Case	(%)	Information
1	Requesting for compensation for money, goods/services	90	4,35	Allegations of maladministration were discovered through reports that had met formal requirements and were continued at the examination stage by the Indonesian Ombudsman. The reports were processed through the Ombudsman's Rapid Response (RCO) method and Investigation on Own Initiative. Total reports were 2,070 cases.
2	Not providing service	730	35,27	
3	Incompetent	40	1,93	
4	Taking sides/discrimination	30	1,45	
5	Prolonged delays	620	29,95	
6	Abuse of authority	20	0,97	
7	Procedural irregularities	460	22,22	
8	Inappropriate	80	3,86	
Total Case		2.070	100 %	

Source: Processed from the Second Quarter Report of the Ombudsman of the Republic of Indonesia, June 2023.

Prevention of maladministration is the work area of the Indonesian Ombudsman and is pursued through study activities on public service issues that have the potential for maladministration. In the second quarter of 2023, several studies have produced suggestions for improvements to the issue:

- a. Providing internet access in 3T areas (Disadvantaged, Frontier, and Outermost);
- b. Supervision of public services in disaster management;
- c. Providing land registration data maintenance services;
- d. Governance of social rehabilitation center services for people with mental disabilities;
- e. Handling out-of-school children in Bangka Belitung Province.

By providing suggestions for improvements, the Indonesian Ombudsman encourages related agencies to carry out improvements to provide higher-quality public services.

Table 2: Community Report Based on Substance

No	Report Substance	Case	%
1	Agrarian (Land and Spatial Planning)	302	14,59
2	Rural	223	10,77
3	Education	185	8,93
4	Employment	179	8,64
5	Transportation and Infrastructure	158	7,63
6	Police	153	7,39
7	Population Administration	119	5,74
8	Civil and political rights	99	4,78
9	Energy and electricity	70	3,38
10	Healthy	68	3,28
11	Social welfare	67	3,23
12	Employment	62	2,99
13	Justice	60	2,89
14	Banking	53	2,56
15	Licensing	27	1,30
16	Social Security	23	1,11
17	Water	22	1,06
18	Others	200	9,66
Total		2.070	100 %

Source: Processed from the Second Quarter Report of the Ombudsman of the Republic of Indonesia, June 2023.

Based on substance, throughout the first semester of 2023, the Indonesian Ombudsman has followed up on 275 public reports through the resolution and monitoring stages. Of this number, 174 reports (63%) were completed and 101 reports (37%) are still in process. Completing community reports at the resolution and monitoring stage is the final stage of handling community reports carried out by the Principal Assistant for Resolution and Monitoring. The most considerable substance is the land sector at 23% (69 cases), personnel at 22% (39 cases), and village government at 10% (22 cases).

Table 3: Community Reports Based on Reported Groups

No	Reported Group	CASE	%
1	Local government	1072	51,78
2	National Land Agency	165	7,97
3	Police	156	7,53
4	Government Agencies/Ministries	112	5,41
5	State Educational Institutions	106	5,12
6	State-Owned Enterprises/Regional-Owned Enterprises	96	4,63
7	Non-Ministerial Government Institutions	83	4,00
8	Judicial Institution	56	2,70
9	Others	224	10,82
	Total Report	2.070	100 %

Source: Processed from the Second Quarter Report of the Ombudsman of the Republic of Indonesia, June 2023.

It monitors the Ombudsman's Recommendations for the reported group in the first semester 2023. The first is the Ombudsman's Recommendation regarding implementing the Court Decision so that the Indonesian Ministry of Finance pays the complainants a certain amount of money.

Second is the Ombudsman's recommendation to the Information and Documentation Management Officer (PPID) of the Ministry of ATR/BPN to implement the Court Decision to provide information on Palm Oil HGUs in the Kalimantan region to information applicants. Third is the Ombudsman's recommendation to the West Kalimantan Provincial Government to complete the provision of compensation for losses to communities affected by the failure to build Sambas Pier in 2014.

The Ombudsman's recommendation is currently in the implementation review process for the Ministry of Finance and the West Kalimantan Provincial Government. Meanwhile, the Ministry of ATR/BPN said it would conduct a second judicial review (PK) at the Supreme Court.

The impact of completing community reports at the resolution and monitoring stage is a direct return of community losses in the form of around IDR 7.6 billion. Furthermore, there are several benefits in obtaining permits, policy improvements, system improvements, and other benefits obtained by the reporting community.

Table 4: Types of Cases Handled by the Corruption Eradication Commission 2023

No	Case Type	Case	(%)
1	Bribery or Gratification	44	51,764
2	Procurement of goods and services	32	37,647
3	Crime of Money Laundering/TPPU	6	7,058
4	Obstruction of the investigation process	2	2,352
5	Illegal levies or extortion	1	1,176
	TOTAL	85	100,00

Source: Corruption Eradication Commission (KPK), January-October 2023

Bribery or Gratification, Procurement of goods and services, Crime of Money Laundering/TPPU, Obstruction of the investigation process, Illegal levies or extortion. The Corruption Eradication Commission's enforcement performance is based on achievement records during the first semester 2023. It carried out 78 investigative activities and 85 investigations. Of the 85 case investigations, the Corruption Eradication Commission has named 89 suspects. The handling of this case is related to the imposition of the money laundering crime (TPPU) article on 6 (six) suspects. Likewise, the status of the 52 cases handled has been raised from investigation to prosecution during the first semester 2023. The Corruption Eradication Commission has also executed 100 court decisions with permanent legal force. In recovering assets affected by corruption, the Corruption Eradication Committee has deposited IDR 166.36 billion into the state treasury. The asset recovery consists of IDR 32.75 million in replacement money, proceeds from corruption crimes amounting to IDR 124.22 billion, and a fine of IDR 9.39 billion.

Table 5: A Place Where the Crime Occurred (Locus Delicti) 2023

No	Locus Delicti	Case	(%)
1	Ministry/institution environment (Central)	26	30,588
2	Provincial government environment	10	11,764
3	State-Owned Enterprises/Regional-Owned Enterprises	20	23,529
4	Regency/city government environment	29	34,117
	TOTAL	85	100,00

Source: Corruption Eradication Commission (KPK), January-October 2023

Meanwhile, from a prevention perspective, the Corruption Eradication Committee continues to encourage improvements in governance in all regional governments. As a result of these improvements, the Corruption Eradication Commission claims to have saved potential regional financial losses worth IDR 16.27 trillion. This comes from increasing local revenue, controlling assets, regional receivables, and land certification.

5. CONCLUSION

Extensive government intervention in aspects of people's lives and the exercise of discretion by government agencies are consequences of implementing the welfare state concept. Government intervention must be based on the law (the principle of legality), but not every citizen's business that the government must serve has a law that regulates it, or there is a law. However, it often contains vague norms, open norms, or contains choices. In this case, the government is free to make policies regarding

various interests or make choices in providing public services. The discretion of public officials is very vulnerable to maladministration in the delivery of public services and has implications for the responsibility and accountability of public officials.

The findings indicate that the role of the Ombudsman and the Corruption Eradication Commission (KPK) in overseeing the implementation of public services shows a significant relationship between the discretion of public officials and vulnerability to maladministration and corruption. In the future, it is necessary to improve and intensify the collaboration between the two institutions in providing public services in order to realize good governance in a clean, transparent, honest manner, free from corruption, collusion, and nepotism, as well as encouraging community participation in carrying out supervision as a form of democratization to prevent abuse of authority.

Ethical Considerations

Not applicable

Conflict of Interest

The authors declare no conflicts of interest.

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