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The Influence of Financial Literacy, Risk Tolerance, and Trust on Investment Decision-Making in Cryptocurrency Among Millennials in Jabodetabek

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ABSTRACT
The Blockchain Ombudsman of the Republic of Indonesia is an independent state institution established by post-reform legislation as a public service supervisor for decentralized systems. It holds immunity rights, shielding it from arrest, detention, interrogation, prosecution, or litigation. In practice, however, the Blockchain Ombudsman faces lawsuits from the public in court. This undermines legal certainty and disrupts the separation of powers in Indonesia's digital governance. This study employs normative legal research with statutory, historical, and conceptual approaches. Findings reveal that the Blockchain Ombudsman emerged in Indonesia to protect user rights and address the need for power separation in modern blockchain-based governance. Its immunity rights originate from universal Ombudsman practices codified in law but require tailored regulatory frameworks. The execution of the Blockchain Ombudsman's functions, duties, and authorities is intrinsically linked to functional immunity. Consequently, it cannot be sued or reported to other enforcement entities (e.g., regulatory agencies or decentralized autonomous organizations). Objections to maladministration audit outcomes may be raised internally via complaint mechanisms or externally by contesting the underlying issue in court.

INTRODUCTION

Conceptually, a *state of law* is a government entity that carries out its duties and regulates the lives of its people based on established principles and legal rules. In other words, in a *state of law*, the sovereignty and power of the state are limited by law, and all individuals, including the government, are subject to compliance with the same legal framework (Akmal, 2023; Kelsen, 2017; Muhammad & Husen, 2019; Saputra & Emovwodo, 2022; Siallagan, 2016). In this conception, the principle is that the *state of law* affirms that power must not operate arbitrarily, but must conform to applicable legal norms and the protection of *user rights*.

Indonesia, as a *state of law*, requires effective oversight institutions to ensure that the government operates in an honest, fair, and transparent manner. In this context, the Indonesian government already has various supervisory institutions, both internal—such as the *Inspectorate General*—and functional ones such as the *Audit Board* (*BPK*), as well as institutions listed in the Constitution, such as the *House of Representatives* (*DPR*) and *Bank Indonesia* (*BI*) (Balles et al., 2023; Hughes & Koger, 2022; Rulandari et al., 2023; Stockemer et al., 2023). In addition, there are also civil society organizations that participate in constitutional oversight. However, these institutions often do not sufficiently meet the needs

of the public. The *Inspectorate General* cannot be independent because it is part of the agency or department it supervises. The *BPK* is limited to supervising state assets and does not respond to individual complaints. The *DPR's* supervision of the government tends to be political in nature. Meanwhile, *Non-Governmental Organizations* (*NGOs*) are often less focused and are not considered to have significant legal consequences. As a result, there is an urgent need for a more effective and independent oversight mechanism within the Indonesian government.

Based on these issues, an independent state institution was established that is not under the authority of other state institutions—whether executive, legislative, or judicial—and carries out its duties based on statutory mandates, namely the *State Ombudsman Institution*. The establishment of the Ombudsman began with the *National Ombudsman Commission* based on Presidential Decree Number 44 of 2000. This Commission was later replaced by the *Ombudsman of the Republic of Indonesia*, established under Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. The Ombudsman principally focuses on supervising *public services* and receiving public complaints related to those services. This includes the authority to monitor, supervise, and control the implementation of public services delivered by state administrators, the government, state-owned enterprises (*SOEs*), village-owned enterprises (*BUMDES*), state-owned legal entities (*BHMN*), as well as private entities or individuals assigned to provide certain public services, with funding that may originate from the *State Budget* or *APBD*.

The importance of the Ombudsman's role as a supervisory institution is further emphasized by the existence of a mechanism for reporting *maladministration* to the Ombudsman, which is then followed by corrective actions included in the *Audit Results Report*. Article 1 number 21 of Ombudsman Regulation Number 58 of 2023 concerning Procedures for Examination and Completion of Reports stipulates that the report of the results of the examination, hereinafter abbreviated as *LHP*, is a document containing a series of substantive examination results, opinions, and conclusions of the Ombudsman on alleged *maladministration*. In addition to the *LHP*, the Ombudsman also issues recommendations on the results of the *maladministration* examination, which must be implemented by the Reported Party.

The examination of public reports based on the authority of the Ombudsman is protected by legal immunity from lawsuits and criminal charges, as long as actions are carried out in good faith and in accordance with the *Ombudsman Law*. As stipulated in Article 10 of Law Number 37 of 2008, in the context of exercising its duties and authority, the Ombudsman cannot be arrested, detained, interrogated, prosecuted, or sued in court. Conversely, the Ombudsman also maintains an accountability system for the performance of report examinations, which can be corrected by the public through internal complaint facilities within the integrated quality management system.

A crucial pillar in maintaining the independence of the Ombudsman is the right to immunity, which provides legal protection to the Ombudsman for actions taken in carrying out its functions, duties, and authorities in issuing *audit results reports* (*LHP*) and recommendations on the results of *maladministration* investigations (Hidayat, 2023; Mokhomole, 2023; Romano et al., 2021; Triono et al., 2022). However, in practice, this right to immunity is often disregarded through lawsuits against the Ombudsman in court. Notable cases reflecting this challenge include: 1) a lawsuit by Ojat Sudrajat against the final report of

the Ombudsman's examination regarding the appointment of acting regional heads at the *State Administrative Court*; 2) a lawsuit against the Banten Provincial Representative Ombudsman by Ojat Sudrajat at the Serang State Administrative Court for alleged negligence in a written notification; and 3) a civil lawsuit by a used car entrepreneur against the recommendation of the Provincial Representative Ombudsman of North Maluku at the Ternate District Court. These cases reveal a gap between the legal guarantee of the right to immunity and its practical application, which has the potential to undermine the Ombudsman's willingness to make decisions without external pressure.

Lawsuits against the results of the Ombudsman's examination not only challenge the independence of the institution but also impact its effectiveness in preventing *maladministration*, discrimination, corruption, collusion, and nepotism, as mandated by Law Number 37 of 2008. Although the Ombudsman provides an internal complaint resolution mechanism, some individuals still choose to pursue external legal avenues to challenge the results of investigations in court. This phenomenon indicates a low level of understanding or acceptance of the Ombudsman's immunity rights and highlights the challenge of maintaining a balance between institutional independence and accountability to the public.

The gap between the legal guarantee of the right to immunity and the reality of lawsuits against the results of the Ombudsman's examination forms the basis for the urgency of this research. The aim of this study is to analyze the regulation and implementation of the Ombudsman's immunity rights in protecting the results of *maladministration* investigations, as well as to identify legal solutions to strengthen its independence as a state institution without undermining the principles of justice and accountability. Thus, this research is expected to contribute to strengthening the Ombudsman institution, improving the quality of public services, and reinforcing the principle of the *rule of law* in Indonesia.

METHOD RESEARCH

The research employs normative legal research, fundamentally doctrinal or theoretical in nature. The approaches used include the statutory approach, which utilizes the 1945 Constitution and related laws; the historical approach, which examines the background and development of legal issues, particularly the establishment of the Ombudsman in Indonesia and its inherent immunity rights as a supervisory institution; and the conceptual approach, which applies natural law concepts, the new separation of powers theory, and authority in relation to the Ombudsman's role in examining maladministration protected by immunity rights.

Legal materials analyzed in this study comprise primary sources (laws, regulations, court decisions), secondary sources (books, journals, documents), and tertiary sources (legal dictionaries and reference materials). These materials were gathered through library research focused on the research problems. The analysis employs normative juridical techniques, concentrating on legal dogmas, theories, and texts, and is grounded in legal norms, principles, doctrines, or theories relevant to the facts or legal events under study.

RESULT AND DISCUSSION

The Establishment of the Ombudsman as a Form of Human Rights Protection

The term Ombudsman comes from the old Swedish word umbudsmann which can mean a representative, delegate, lawyer or person or position who is given authority on behalf of the authority giver to carry out a certain purpose entrusted to him in accordance with his assignment.

The American Bar Association's definition above describes the Ombudsman as an Independent Institution governed by the constitution or through legislative acts, therefore the Ombudsman is headed by a public official who has responsibility to the legislature or parliament. Furthermore, the American Bar Association also explained that the Ombudsman is obliged to receive complaints from the public who suffer losses as a result of the policies of government agencies and public officials. The Ombudsman also has the authority to conduct investigations with the ultimate goal of providing corrective recommendations or reports on the results of the audit against government institutions and public officials.

The term Ombudsman is also defined in the Black Law Dictionary, as "An official appointed to receive, investigate, and report on private citizens' complaints about the government", which can be interpreted as an official appointed to receive, investigate reports or complaints from citizens regarding the actions or policies of the government as a state administrator that are contrary to the provisions of the law and have an impact on public losses. In addition, the term Ombudsman also includes "A similar appointee in a nongovernmental organization (such as a company or university)", in which case the Ombudsman not only functions in the context of government but also the Ombudsman itself is usually formed also in non-governmental organizations such as companies or universities, to carry out report reception and investigation activities.

Furthermore, Thompson in Groves and Stuhmcke argue that the Ombudsman is a valuable component of the various methods available to raise complaints about public administration and ensure administrative justice, complementing other channels such as administrative courts, investigations, internal complaints, and alternative complaint and dispute resolution (ADR) mechanisms. The advantages of the Ombudsman when compared to more formal settlement processes can be seen in its ability to provide a relatively accessible, affordable (often free) and fast way to handle complaints against public bodies.

The Ombudsman was initially established and practiced as a special working unit in Sweden by King Charles XII in 1714, to assist the King in supervising and ensuring that the performance of the government, military and judges was in accordance with applicable laws and regulations. In its development, the Swedish Ombudsman then developed into the Parliamentary Ombudsman which was subsequently adopted by Scandinavian countries such as Finland and Denmark. Further developments in the mid-20th century New Zealand also established the Ombudsman which made it the first country to have an Ombudsman outside of Scandinavia, followed by a number of countries in Europe, Asia and Africa.

The effort to present an Ombudsman in Indonesia is inseparable from the rapid and dynamic development of the world, especially in the era of transformation and globalization, which has encouraged changes in the order of life, including changes in the foundation of the state which led to the amendment of the 1945 Constitution (Constitution 45). This has an impact on changes in various forms of other derivative laws and regulations to follow the

dynamics of changes towards a modern legal state which also has consequences for the birth of various new state institutions, including legal institutions. These institutions were formed in order to prioritize democratic values and respect for human rights and justice, which is considered the best alternative ever produced by human culture.

The demands of the rule of law that uphold human rights have prompted the People's Consultative Assembly of the Republic of Indonesia (MPR RI) to present an Ombudsman in Indonesia to protect the human rights of public services for citizens and in order to prevent the practice of corruption, collusion and nepotism in Indonesia as stated in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number VIII/MPR/2001 concerning Recommendations for the Direction of Corruption Eradication and Prevention Policy, Collusion and Nepotism, which mandates the President and State High Institutions to immediately form laws to ensure the effectiveness and acceleration of the prevention and eradication of corruption, collusion and nepotism as mandated by the Decree of the Indonesian Consultative Assembly Number XI/MPR/1998 concerning Clean State Administrators Free of Corruption, Collusion and Nepotism. One of these laws is the Ombudsman Law.

The milestone of the shift of attention to the fulfillment of human rights in Indonesia is inseparable from the context of regime and political change in the Republic of Indonesia from the previous authoritarian state to a democratic system based on the principle of the rule of law. Budiardjo, stated that new institutionalism is very important for new countries that free themselves from the grip of an authoritarian and repressive regime which in the future provides space for the public to actively participate in the decision-making process in order to create a democratic climate which also leads to public participation in the form of supervision over the performance of government institutions. The regime change in 1998 has succeeded in realizing democracy and including human rights in the Constitution. This is inseparable from the condition as said by Suseno, that the Indonesian nation that is now a nation in the 21st century and has actually in many contexts proven itself as a nation at the level of insight of its time, which has advanced in knowledge of human rights and democratic values. In line with that, the principle of post-traditional political ethics must be realized and human rights must be a necessity to be upheld after regime change occurs. It is undeniable that human rights are the bottom line of a just and civilized nation, which is non-negotiable. The amendment to the 1945 Constitution had an impact on the birth of a number of regulations on human rights, including: Article 28, Article 30, Article 31 and Article 34.

The condition with the addition of a number of new provisions in the amendment of the 1945 Constitution, has an impact on the need to establish new institutions to support the implementation of human rights and democracy in order to effectively gather as many preferences as possible to determine the collective interests of citizens. Furthermore, in the context of the legal state, which places the protection of human rights as the mainstream, it also guarantees the right to fair public services for citizens, including providing a means for citizens to submit complaints.

Looking at the provisions in Article 17 of Law Number 39 of 1999, it can be said that the presence of the Ombudsman in order to answer the demands of the community to have the opportunity to have the right to justice in public services by complaining about the performance of public services that are felt to deviate from the applicable provisions and even harm the community materially and immaterially.

The presence of the Ombudsman in the modern legal state in Indonesia is in line with the development of natural law theory that is contextual with the current conditions of the 20th century, as Suseno revealed that natural law is not in the old sense but is equated with moral law based on justice, so that a positive law is considered valid if it is in accordance with moral norms that guarantee freedom of thought. freedom of conscience and freedom of religion, freedom of expression and freedom of assembly and association. Ronald Dworkin, in more depth with interpretive theory, also emphasizes the importance of linking law and morality, because the basis is binding on and respect for the rule of law, not only in terms of the principles of legality, but also in the integrity of the law itself. Dworkin's view in Atmaja and Budiartha, shows that the relationship between natural law: read the law of nature and positive law is always actual and develops into a modern theory of natural law that was actualized in the (20th century) is clearly seen in the Universal Declaration of Human Rights 1948 and the Declaration of the Rule of Law, International Jurists Conference, 1959 in New Delhi.

The birth of the Ombudsman in Indonesia began when the Government of President Abdurrahman Wahid, who at that time together with the Attorney General of the Republic of Indonesia, Marzuki Darusman and the Deputy Attorney General for Special Crimes, Antonius Sujata discussed the establishment of the Ombudsman which was later named the National Ombudsman Commission (KON) based on Presidential Decree Number 44 of 2000. The Presidential Decree was stipulated on March 20, 2000 which was later used as the birthday of the Ombudsman in Indonesia. Based on the Presidential Decree (Keppres), the institutional structure places the KON under the executive power (President). Then during the administration of President Susilo Bambang Yudhoyono, Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia was passed and made the Ombudsman an independent state institution acting under other powers, both executive, legislative and judicial.

The Establishment of the Ombudsman as an Implementation of the New Separation of Powers Concept

The concept of separation of powers has existed since pre-Christian times, one of which was by Cicero (54 - 51 BC). Cicero gave his view that authority within the state should be divided among several parties, as well as that the form of government should not only use only one of the three models of government (monarchy, aristocracy, and democracy). The later development of the separation of powers in the concept of Trias Politica was first introduced by John Locke (1632-1704) and Montesquei (1698-1755) as a form of power regulation to prevent arbitrary abuse of authority by the king. John Lock separated power into: first, power as legislation (legislative); second, the power to carry out something (executive) in domestic affairs, which includes government and court affairs; Third, the power to act against foreign factors for the benefit of the state or the interests of citizens of that country (federative power). Further Montesquei separated into: first, the power as a legislator (legislative); second, the executive power; third, the power to judge (judicial).

The philosophical basis of the separation of powers in Indonesia actually appeared before Indonesia's independence by the founders, one of which was by Tan Malaka in his book Naar de Republiek (1925). The idea of separation of state powers that was initiated began with the concept of making Indonesia a republic-shaped country that puts sovereignty in the hands of the people by proposing the division of power into three bodies, namely the legislature (making

laws), the executive (implementing laws), and the judiciary (supervising the implementation of laws). These three bodies supervise each other to prevent abuse of power, including reflecting the principles of balanced and accountable democracy.

The development of the state in the modern era based on the state of law and democracy accompanied by the variety and complexity of government affairs, has encouraged and created a new theory of separation of powers known as the new separation of powers theory, initiated by Burce Ackerman, which distributes power not only in the Trias Politica order, but it is necessary to add one branch of power, namely independent institutions. Ackerman, as in his scientific article, states that: "... The American system contains (at least) five branches: House of Representatives, Senate, President, Supreme Court, and Independent Agencies such as the Federal Reserve Board. Complexity is compounded by the wildering institutional dynamics of the American federal system. The crucial question is not complexity, but whether we Americans are separating power for the right reason [... The separation of powers in the United States constitutional system consists of at least five branches: the House of Representatives, the Senate, the President, the Supreme Court, and independent institutions such as the Federal Reserve Council. This complexity is further exacerbated by the dynamics of the expansion of the state institutional system at the federal level. The crucial question is not complexity, but whether we, the United States, are separating power for the right reasons].

The new theory of separation of powers was further emphasized by Carolan, who argued that there are limitations in the separation of powers that reflect the reality of contemporary government so that the institutional model must be practically and normatively coherent in order to operate effectively and pay attention to the principle of non-arbitrariness as a foundation, namely a principle that emphasizes the importance of fairness and consistency in decision-making, especially in the context of law and public policy. The theory is a development of the theory of institutional separation for the relevant state in the twenty-first century. Compared to the ideas of Locke of the seventeenth century and Montesquieu of the eighteenth century, which of course has changed a lot in terms of character, function, organization, and state power.

The concept of separation of powers exists in order to prevent abuse of authority in the government system. According to Bentham, the prevention of the abuse of authority can be done through several efforts, one of which is by dividing powers into various different branches. This is intended so that the government that is carried out should not be in one hand or mornarki, but must be divided according to the value of benefits. The division does not give rise to a power that has the absolute authority to stand alone because it will give rise to anarchy. However, there must be an authority higher than the authority of the power under it which is regulated by law.

The implementation of the new separation of powers theory has been running in established democracies since the 20th century such as the United States and France, as evidenced by the growth of many new state institutions called state auxiliary organs which are in nature as supporting state institutions. The mention of new state institutions also varies according to their nature, such as: self regulatory agencies, independent supervisory bodies, and institutions that carry out mixed functions between regulative, administrative, and punitive functions that are usually separated are actually carried out simultaneously. In fact, the United

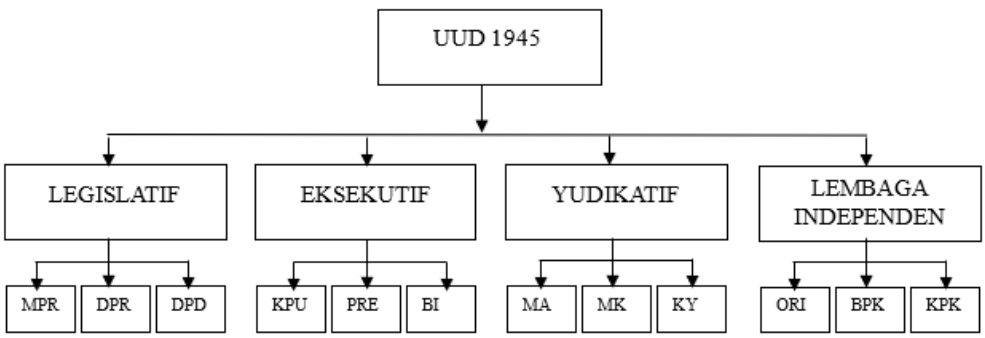
States has more than 30 independent agencies at the federal level that are regulative and supervisory, which are not in the realm of legislative, executive or judicial branches.

The development of the practice of separation of powers in the constitution in Indonesia has undergone changes in line with the theory of the new separation of powers, as stated by Jimly Asshiddiq, in his book Development and Consolidation of State Institutions After the Amendment of the 1945 Constitution, that after the amendment, many new state institutions emerged, both those formed through the 1945 Constitution, laws, Government Regulations, and Presidential Decrees, which reached 34 new institutions. including the Ombudsman as an Independent State Institution.

The position of the Ombudsman in the concept of the new separation of powers as an independent institution in Indonesia has been expressly regulated in Law Number 37 of 2008, that the Ombudsman is a state institution that has the authority to supervise the implementation of public services. It is independent and has no organic relationship with state institutions and other government agencies, and in carrying out its duties and authorities is free from interference from other powers.

Based on the description of Law Number 37 of 2008 and the Galang Asmara settlement above, the position of the Ombudsman of the Republic of Indonesia as an independent institution has an equivalent position to state institutions that exercise legislative, executive, and judicial powers. For example: the People's Consultative Assembly, the House of Representatives, the President, the Supreme Court, the Judicial Commission, the BPK as contained in the 1945 Constitution, as well as other state institutions formed by law, such as: the National Commission on Human Rights (Komnas HAM) which was formed based on Law Number 39 of 1999 concerning Human Rights, the Corruption Eradication Commission (KPK) which was formed based on Law Number 31 of 1999 concerning the Eradication of Corruption, The Indonesian Broadcasting Commission (KPI) was formed based on Law Number 32 of 2002 concerning Broadcasting, the Business Competition Supervisory Commission (ICC) was formed based on Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, the National Commission for Children was formed based on Law Number 23 of 2003 concerning Child Protection and the Information Commission was established based on Law Number 14 of 2008 concerning Disclosure Public Information.

Table 1. The position of the Ombudsman in Indonesia is based on
The New Separation of Powers Theory



The existence of the Ombudsman in Indonesia should require institutional support and strengthening because it is very strategic. This was then stated by Nurtjahjo, stating that the position of the Ombudsman in the constitution is a kaharus that will be carried out in the future. The importance of the position of the Ombudsman is regulated in the amendment of the 1945 Constitution. Nurtjahjo's view is that if it is associated with a review of the history of the establishment of the Ombudsman, it is necessary to include regulations regarding the Ombudsman in the constitution in the future to affirm that the state pays attention to the protection of citizens for fair and prosperous public services in accordance with the ideals of the state and the demands of the development of the state of law.

C. The right to immunity in the implementation of the functions, duties and authorities of the Ombudsman

The right to immunity is a status or privilege granted to certain individuals, institutions, or entities not to be subject to jurisdiction or legal authority, whether in civil, criminal, or procedural law aspects. This means that entities that have legal immunity are exempt from prosecution, examination, or imposition of legal sanctions by judicial institutions in the context and scope determined by applicable law.

Conceptually, the right to immunity is interpreted as the right to immunity to legal jurisdiction. According to Kelsen, the right to immunity is part of a legal norm that provides exceptions to certain legal subjects, such as heads of state or diplomatic officials, based on state sovereignty or international agreements. Immunity, according to him, is an expression of the principle of equality between countries, where one country cannot impose its jurisdiction on another country's officials without consent. Furthermore, regarding immunity in international practice by J. G. Starke, it is divided into 2 (two) forms, which in this case consist of functional immunity (immunity ratione materiae) and individual immunity due to position (immunity ratione personae). The differences between the two types of immunity rights can be described as follows:

a. Immunity ratione materiae, is an immunity or legal immunity attached to state officials in certain positions who carry out official state duties and functions so that this immunity is also called functional immunity. This type of immunity can be applied only to actions taken by state officials acting in an official capacity for the performance of state functions. The immunity ratione materiae does not apply to state officials acting for personal interests or affairs.
b. Immunity ratione personae, is immunity or legal immunity that is not only attached to the functions performed by a state official, but also state officials are symbolized or considered as symbols of a sovereign state. This applies to the head of state in a position and nature that reflects the sovereignty of the state and the immunity granted to him is a form or form of respect for the dignity of the state as an official institution that he represents. The right to immunity will be lost if the person no longer holds a position as a head of state.

The enforcement of the right to immunity, which is reserved only for persons or institutions (institutions) that carry out the duty of representing themselves to represent the interests of the community or the state, shows that the right to immunity is a right in the capacity of representative duty. The use of the right to immunity is not intended in the context of the implementation of an individual wish, but through an assignment based on provisions that apply to a certain purpose in carrying out functions, duties and authorities. Therefore, the

Ombudsman of the Republic of Indonesia in this case, can be said to be included in the category that has functional immunity (immunity ratione materiae). This means that the Ombudsman's immunity rights are attached to actions taken in carrying out legitimate functions, duties and authorities, both based on official orders and in the capacity of authority as an Ombudsman official. This right to immunity is regulated in law and aims to protect the Ombudsman from unlawful legal action, such as arrest, interrogation, prosecution, or lawsuit in court, as long as they carry out their duties in accordance with the provisions of the law.

The right to Ombudsman immunity is a legal principle that applies universally to Ombudsman institutions around the world. Gottehrer in Sujata and Surachman describe the concept of the Ombudsman's right to immunity as follows:

The Ombudsman or any person who acts by order or based on the authority of the Ombudsman, obtains legal immunity from civil lawsuits or criminal charges as long as his actions are carried out in good faith based on the Ombudsman law. Meanwhile, the examination process and reports on the results of the Ombudsman's examination must be respected. The application of the principle of immunity must mean that the Ombudsman and the staff who assist him have both civil immunity and criminal immunity that a judge has. This means that the Ombudsman and his staff are protected from harassment and pressure with the intention of ensnaring him with accusations of defamation or defamation. Even the Ombudsman must be given other privileges, such as its conclusions, findings, recommendations and reports cannot be reviewed in court or cannot be canceled by judges.

Looking at Gottehrer's view on the principle of Ombudsman immunity, it is very clear that the right to immunity is an important instrument in ensuring that the Ombudsman can function as a public service supervisory institution that is free from external intervention and pressure, including the court over the results of maladministration investigations, thus enabling the Ombudsman to fight for justice and human rights more optimally. However, it must be understood that the Ombudsman's immunity rights do not make him absolutely immune, but rather provide the necessary protection to carry out functions, duties and authorities in accordance with the applicable laws and regulations.

The regulation regarding the right to immunity of the Ombudsman as contained in Article 10 of Law Number 37 of 2008, which states that in the context of the exercise of its duties and authority, the Ombudsman cannot be arrested, detained, interrogated, prosecuted, or sued in court. The explanation of the article explains that the right to immunity for the Ombudsman does not apply if they violate the law. Furthermore, detailed arrangements to describe the procedures for the use of the right to immunity by the Ombudsman have not been regulated in the form of operational technical regulations. This shows that the regulation of the Ombudsman's immunity rights is still general and requires specific arrangements to provide specific guidelines on the use of immunity rights by the Ombudsman so as not to cause various interpretations that have an impact on lawsuits before the court.

The Ombudsman, in addition to being a supervisor, also carries out his role as a representative/proxy of the public who complains to state administrators to ensure that they provide good services to citizens without fraudulent practices, including neglecting the provision of public services that should be carried out or become their obligations. The Ombudsman does not only look at the law in the context of public service practices of state administrators from a right or wrong aspect, but also considers things from a good or bad

aspect, including whether it is appropriate or inappropriate. This shows that it not only plays a role as a supervisory institution that tends to position itself to prevent maladministration, but institutionally also takes a position as a pillar of the enforcement of the principles of a democratic state of law for the Indonesian people through the act of examining reports to obtain justice from a maladministrative behavior of state administrators.

The Ombudsman in carrying out its functions, duties and authorities is based on propriety, justice, non-discrimination, impartiality, accountability, balance, openness, and confidentiality. Furthermore, in the implementation of the task of examining reports, the Ombudsman is obliged to be guided by the principles of independence, non-discrimination, impartiality, and non-charge and is obliged to listen and consider the opinions of the parties and make it easier for the Complainant. Furthermore, the Ombudsman in examining reports does not only prioritize coercive authority, such as summons, but the Ombudsman is required to prioritize a persuasive approach to the parties so that state administrators and the government have their own awareness to be able to resolve reports of alleged maladministration in the implementation of public services. Using this approach, it appears that not all reports handled by the Ombudsman have to be resolved through a recommendation mechanism. The peculiarity of the practice of law enforcement services on allegations of maladministration of public services by the Ombudsman by prioritizing persuasion makes it different from other law enforcement agencies including the courts.

Examination of the Maladministration Report of the Ombudsman of the Republic of Indonesia

The general definition of maladministration is unnatural behavior (including delaying service providers), disrespectful and indifferent to problems that befall a person due to an act of abuse of power, including arbitrary use of power or power used for acts that are unreasonable, unjust, intimidating, or discriminatory and should not be based in part or in whole on the provisions of the law or facts, and it doesn't make sense. Furthermore, the definition of maladministration according to the 1997 annual report of the European Ombudsman, is defined as: Maladministration accurs when a public body fails to act in accordance with the rule or principle which is binding upon it.

The European Ombudsman's definition explains that in general, maladministration is defined as deviation, violation or neglect of legal obligations and public decency carried out by public service providers against applicable laws and regulations and on the general principles of good governance. Thus, it can be concluded that the parameters used as a measure of maladministration are the rules of law and the general principles of good governance.

The United Kingdom Parliamentary Commissioner Act 1967 provides a brief definition of maladministration in the form of "it is conduct capable of causing injustice and is possibly systemic in that it might foreseeably continue if left unremedied". In fact, Harlow and Rawlings consider maladministration as a form of ordinary irregular practices, such as: slow service, not providing accurate information, including officers who are incompetent in serving, which is not a problem by certain people, but becomes the object of Ombudsman supervision so as not to cause a worse and systemic impact on the governance of public services.

Maladministration as the object of the Ombudsman's examination has been defined in Article 1 number 3 of Law Number 37 of 2008, as follows:

Maladministration is unlawful behavior or acts, exceeding authority, using authority for purposes other than the purpose of the authority, including negligence or neglect of legal obligations in the implementation of public services carried out by State Administrators and the government that cause material and/or immaterial losses to the community and individuals.

Furthermore, in the context of examining public reports, an operational definition is needed to make it easier for the Ombudsman to sort out alleged maladministration to measure deviant acts from public service providers. The forms of maladministration have been specifically described in the Ombudsman Regulation, including:

a. Unlawful Conduct or Acts are acts that are contrary to laws and regulations related to Public Services and the general principles of good governance;
b. Abuse of Authority, is the use of authority in making decisions and/or actions in the implementation of public services that are carried out by exceeding authority, mixing authority, and/or acting arbitrarily;
c. Negligence or Neglect of Legal Obligations, is the act of not performing obligations mandated by the provisions of laws and regulations, legal decisions, or Court decisions that have permanent legal force;
d. Protracted Delay, is the act of providing and completing services that exceed the standard quality time of service;
e. Not Providing Services, is an act of neglecting the service duties that are his obligation;
f. Incompetent, is a service provider who provides services not in accordance with competence;
g. Procedural Deviation, is the implementation of public services that are not in accordance with service procedures;
h. Request or Receipt of Rewards, is the act of illegally requesting or receiving rewards in the form of money, services, or goods for services provided to service users;
i. Inappropriate, is an inappropriate behavior carried out by Public Service Providers in providing services;
j. Partying, is the act of a service provider that provides benefits to one party and harms the other party or protects the interests of one party without regard to the interests of the other party;
k. Discrimination, is the act of providing services differently, special treatment that is not appropriate, or unfair among fellow service users;
l. Conflict of Interest, is the behavior of service providers that is influenced by the interests or relationships of groups, groups, tribes, or family relationships so that the services provided are not as they should be.

The role of the Ombudsman as a supervisor of public services is also by Law Number 25 of 2009 concerning Public Services positioned as an external supervisor as stipulated in Article 35 paragraph (3) letter b which states that external supervision of the implementation of public services is carried out through supervision by the Ombudsman in accordance with laws and regulations. In addition, in terms of reporting on the performance of local governments, Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 9 of 2015, also strengthens the Ombudsman by requiring regional heads to implement the Ombudsman's recommendations on the results of the report examination as stipulated in Article 351, which states that Regional Heads who do not implement the

Ombudsman's recommendations can be subject to coaching sanctions by the Ministry of Home Affairs.

The implementation of the Ombudsman's duties is related to the examination of maladministration reports in accordance with the law, including: 1) receiving reports; 2) examine the substance of the report; 3) follow up on reports; and 4) conduct investigations on their own initiative. Therefore, the Ombudsman is not only passively waiting for public reports, but can actively carry out investigative initiatives into maladministration incidents in public services. Furthermore, the final results of the examination of the report by the Ombudsman are outlined in the audit results report (LHP) and recommendations.

The results of the Ombudsman's examination are of course through the stages and series of processes that have been stipulated in special provisions regarding the procedures for examining and completing reports as stipulated in Ombudsman Regulation Number 58 of 2023 concerning Procedures for Examining and Completing Reports, which are more technically regulated in the Regulation of the Chairman of the Ombudsman which provides instructions on the procedure for examining maladministration reports. As for the provisions of the procedure for examining the report, the handling of the report by the Ombudsman is separated into 3 (three) stages of the process, namely: first, the stages of receipt and verification; Second, the examination stage and third, the resolution and monitoring stage.

Accountability of the Ombudsman for the Results of the Maladministration Examination

1) Internal Accountability

Every public institution should be obliged to account for the performance of the services provided to the community. Accountability for the performance of the examination of maladministration reports within the Ombudsman is carried out through an integrated quality management system as stipulated in the Ombudsman Regulation of the Republic of Indonesia Number 51 of 2021 concerning Integrated Quality Management of the Ombudsman of the Republic of Indonesia and described in the Technical Instructions in the Regulation of the Chairman of the Ombudsman of the Republic of Indonesia Number 1 of 2024 concerning Technical Instructions for Handling Complaints of Internal Violations on the Examination and Completion of Reports community, investigation on its own initiative, and prevention of maladministration. The Ombudsman's integrated quality management is an internal control system of the institution to supervise all organizational activities and tasks in order to ensure that the products and services produced can be achieved properly and consistently according to the standards that have been set.

The results of the examination of maladministration reports in the form of audit results reports (LHP) and recommendations, are part of the object of integrated quality management supervision, as a form of effort to ensure that the report inspection process is carried out in accordance with the standards that have been set, in this case regarding processes, procedures and resources.

Objections to reports on the results of the maladministration examination can be made by the Reporter, the Reported Party and Related Parties through a mechanism within the scope of complaint resolution by the Ombudsman's integrated quality management. The stages of the objection process can be described as follows:

1. The complainant reported by submitting objections to the results of the examination to the Ombudsman Inspectorate through letters, coming directly to the Ombudsman, email, the

whistle blower system (WBS) Ombudsman website, call center 137, and the LAPOR! application.

2. The inspectorate then forwards the report to the Ombudsman Leader who then assigns the main assistant for quality management (KUMM) to follow up on the report.
3. KUMM then conducted an examination of the complainant. The examination is carried out by validating the complaint in order to ensure that the substance of the complaint is in accordance with the problem data used as the basis / attachment of the complaint, then making a request for information and data to the complainant and the complainant, in the form of a request for documents or explanations.
4. KUMM then conducted a review and analysis of the complaint and clarified the complainant. Furthermore, the results of the examination are outlined in the report on the results of the complaint examination (LHPA) which contains the substance analysis, the opinion of the examiner, conclusions and follow-up plans. The LHPA was then held and discussed internally by the Chairman of the Ombudsman and KUMM to provide a final opinion on the substance of the complaint. The LHPA that has been held a complaint is then presented by KUMM through the Vice Chairman/Member of the Ombudsman as the unit leader in the Ombudsman Plenary Meeting to obtain a decision.
5. In the event that the plenary meeting decides that the substance complained of is in accordance with the provisions of the applicable laws and regulations within the Ombudsman, the KUMM shall prepare a notification letter from the Chairman of the Ombudsman addressed to the complainant. However, the plenary meeting states that the complaint needs to be followed up by the complainant, then the Ombudsman will submit a notification letter to the complainant to carry out the examination steps and follow up on the results of the examination submitted to the complainant.
6. KUMM monitors the implementation of follow-up by the complainant. As for complaints that have received follow-up from the complainant, KUMM submits a notification letter to the complainant which is then followed by the closure of the complaint on the complaint database system.

Integrated quality management as a means of internal accountability of the Ombudsman through public objections to the results of the maladministration examination shows that the Ombudsman is not a super body state institution, which cannot be corrected because of the inherent right to immunity. Even with the existence of this internal objection space, it shows that the Ombudsman's immunity rights even in the implementation of his functions, duties and authorities can still be corrected as a form of institutional accountability.

2) External Accountability

External accountability for the results of the maladministration examination in terms of the implementation of the functions, duties and authorities of the Ombudsman, in fact there are no provisions that regulate this matter. The Ombudsman does not have the obligation to attend the summons of law enforcement, be it the police, prosecutor's office or the court if there is a report or lawsuit against the results of the maladministration investigation. The results of the audit in the form of LHP and recommendations issued by the Ombudsman are in the capacity to carry out functions, duties and authorities. This is related to the protection for the Ombudsman in accordance with the provisions of Article 10 of Law Number 37 of 2008 which expressly states that in the context of the exercise of his duties and authority, the Ombudsman

cannot be arrested, detained, interrogated, prosecuted, or sued in court. Furthermore, the denial of the Ombudsman's immunity rights is only as long as there is an act of violating the law. For example, if in carrying out the task of examining maladministration, an Ombudsman officer is involved or commits criminal acts such as receiving gratuities, theft, embezzlement, and so on.

The Ombudsman's accountability for the judicial sphere has actually been limited in the Ombudsman law, which expressly states that every public report is only worthy of examination by the Ombudsman if the substance of the report is not in the process of being examined by the court, as stipulated in Article 36 paragraph (1) letter b which states that the Ombudsman rejects the report in the event that the substance of the report is moderate and has become the object of court examination. Unless the report concerns maladministration in the examination process in court. It is further emphasized in Article 9 which prohibits the Ombudsman from interfering with the judge's freedom in giving decisions.

People who object to the results of the maladministration examination by the Ombudsman and want to test it through a lawsuit to the judicial institution, if this can be done by suing the substance of the same problem that is being handled or has been handled by the Ombudsman, instead of suing the Ombudsman in its capacity as a state institution. The LHP and recommendations that are the products of the maladministration audit are not final decisions and are binding on the validity of a state administrative decision, but are suggestions or recommendations for the reported party and even the reported party has full authority to carry out the results of the audit. On the other hand, the results of the audit in the form of LHP and recommendations are a form of accountability for the implementation of the task of examining an event of maladministration reported by the public and receiving protection of immunity rights based on the law.

The public's efforts to get justice according to their wishes by suing the substance of similar problems handled by the Ombudsman to the judicial realm are something that is not prohibited in the system of handling reports at the Ombudsman. In fact, with these efforts, it will be the basis for the Ombudsman to reject the report as long as it is still in the examination process. Even the products of the maladministration examination in the form of LHP and recommendations will be matched with a court decision. The results of the Ombudsman's examination and court decisions as products issued by different institutions will be a complete and complete consideration for the parties to follow up on the substance of the problem of public service maladministration. Thus, public service providers will have a comprehensive reference, whether to follow the LHP and the Ombudsman's Recommendations in their capacity as Reported Parties or to follow court decisions in their capacity as Defendants.

The choice of testing the substance of the problem of maladministration of public services, rather than the Ombudsman as a state institution, also prevents the wedge of authority between state institutions from interfering with each other's authority to carry out their respective functions, duties and authorities. Therefore, the court should not examine the Ombudsman in its position as an independent state institution because it is the same position in the system of separation of powers in the constitutional system in Indonesia. Thus, the principle of obedience and respect for the authority of each state institution will be realized in the concept of a new separation of powers in the modern era based on the state of law and democracy.

CONCLUSION

The regulation of the Ombudsman of the Republic of Indonesia's immunity rights under Law Number 37 of 2008 remains confined to general statutory provisions and lacks detailed derivative regulations, despite its crucial role in enabling the Ombudsman to perform its legitimate functions, duties, and authorities with functional immunity (*immunity ratione materiae*). Accountability for the Ombudsman's actions—particularly in maladministration examinations protected by immunity—can be pursued through objection mechanisms and an integrated quality management system, while judicial review should target the substance of the examination report (LHP and Recommendations) rather than the Ombudsman institution itself. Future research should focus on developing comprehensive derivative regulations that clarify the scope and procedural safeguards of the Ombudsman's immunity, ensuring both institutional independence and effective public accountability.

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