

Research Article

Quasi Judicial Ombudsman: Measuring Legal Certainty After Constitutional Court Decision No. 62/PUU-VIII/2010

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Abstract: This study discusses the legal reconstruction of the authority of the Ombudsman of the Republic of Indonesia (ORI) after the Constitutional Court (MK) Decision Number 62/PUU-VIII/2010, with a focus on advocacy based on pseudo/quasi principles. The Ombudsman, as an independent state institution, plays a role in supervising the implementation of public services to prevent and deal with maladministration. However, the existence of Article 43 of Law Number 37 of 2008 concerning the Ombudsman and the Constitutional Court's decision creates the potential for norm inharmonization that has an impact on the implementation of the Ombudsman's duties. This study analyzes two main things: legal certainty on the authority of the Ombudsman after the Constitutional Court's decision and legal reconstruction to strengthen the supervisory function of public services. The results show that the pseudo/quasi principle allows the Ombudsman to carry out an advocacy function similar to the judiciary, but without full executive power such as the judiciary. Legal certainty is needed to ensure that the Ombudsman's actions remain within the limits of the authority regulated by law. Legal reconstruction is suggested to provide stronger legitimacy to the Ombudsman's authority, including strengthening the recommendation aspect to be more binding and implementive. This reconstruction also includes increasing institutional capacity, coordination between agencies, and strengthening regulations that support supervisory functions that are more responsive to the needs of the community. Thus, this research contributes to the development of public service law, especially related to the role of the Ombudsman in realizing transparent, accountable, and fair services.

Kata kunci: Ombudsman; pseudo/quasi; advocacy; legal reconstruction; public service.

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1. Introduction

Indonesia, as a state of law, has established the institution of the Ombudsman of the Republic of Indonesia (ORI) as one of the alternative dispute resolution mechanisms [1]. The Ombudsman has the authority to receive, examine, and follow up on public complaints related to public services, including in the resolution of disputes between the public and state governing bodies or officials[1]. Dispute resolution through the Ombudsman is expected to provide an alternative for the community to seek justice quickly, costly, and effectively.

The Constitution of the Republic of Indonesia in Article 24 Paragraph (3) of the 1945 Constitution has mandated that State institutions that function pseudo/quasi-judicial can directly adjudicate problems according to their fields, in this case the Ombudsman as an institution in charge of cases related to public service maladministration [2]. The Pseudo/Quasi principle is used as a response to the inharmonization of norms regarding the authority to establish Ombudsman representatives in the provincial or district/city areas. The Pseudo/Quasi principle is a legal concept that underlies the authority of the Ombudsman of the Republic of Indonesia (ORI) in supervising the implementation of public services. In addition, it is also based on Article 34 Paragraph (3) of the 1945 Constitution concerning the State which is obliged to provide good public services [3]. The provisions of the Article imply

philosophically that every implementation of public services carried out by public service institutions should reflect the principles of good governance and reflect decent public services.

The Ombudsman of the Republic of Indonesia is a non-governmental state institution tasked with supervising the implementation of public services by state administrators and state-owned enterprises (SOEs)[4] This is also regulated in Article 1 number 13 of Law Number 25 of 2009 concerning Public Services which provides a clear legal concept about Ombudsman [5] The place of office of the ombudsman is in the capital of the Republic of Indonesia as stated in Article 5 Paragraph (1) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia[6] and Paragraph (2) states that it can establish representatives of the Ombudsman in provinces and/or districts/cities. Meanwhile, the authority of the Ombudsman is currently regulated in Articles 6 to 8 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. In its journey, public service institutions carry out their duties, so they should implement public transparency which requires that every public official can receive space for public participation in transmitting information, both digital public information and non-digital public information with an accountable and trustworthy nature. The purpose of the information is so that the publication mechanism in policy-making can be based on participatory substance and true, honest, and non-discriminatory information[7]

Public information resulting from the inconsistency between realizations will cause a polemic called maladministration. And this has the potential for maladministration and the public can make a report to the Ombudsman as stipulated in Article 23 Paragraph (1) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. Maladministration is an unlawful act committed by public service providers in carrying out their duties and authorities. In Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, maladministration is defined as 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 and government administrators. Acts of maladministration can cause material and/or immaterial losses to the community and individuals[8] However, if it is not the duty and authority of the Ombudsman in handling and advocating for the reported problems, then based on Article 27 Paragraph (1) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, the Ombudsman informs this matter with the results of the examination signed by the Chairman of the Ombudsman.

Along with the development of the times and the demands of the community for the implementation of quality public services, various discourses have emerged to reconstruct the law of the Ombudsman's authority. This reconstruction aims to strengthen the role and effectiveness of the Ombudsman in realizing good governance. Currently, the Ombudsman's authority is only limited to providing recommendations to state administrators. These recommendations are non-binding and often not followed up by state administrators. In the implementation of this public service, both those carried out by government institutions supervised by the Ombudsman and the Ombudsman itself are still guided by Law Number 25 of 2009 concerning Public Services, namely according to the concept of Good Governance. The concept of Good Governance as regulated in Article 3 letter (b) of Law Number 25 of 2009 concerning Public Services [5].

The Independent Judiciary affirms that judges must decide cases fairly, without discriminating against people. The court is tasked with assisting justice seekers and trying to overcome all obstacles in order to achieve a fair, clean, objective and professional judiciary. However, there are concerns about potential bias that can occur in judges who are constructed as free and impartial human beings. In this case, the Ombudsman can act as an alternative dispute resolution mechanism that is more objective and affordable for the community.

After the Decision of the Constitutional Court (MK) Number 62/PUU-VIII/2010 when compared to the provisions of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, it is considered contradictory. Contrary norms or In Harmonization are found in Article 43 of Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. This causes confusion in the implementation of the Ombudsman's duties and functions. Article 43 paragraph (1) of Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia states that: "If deemed necessary, the Ombudsman may establish a representative of the Ombudsman in the provincial or district/city area". The reading of the Article requires that the Ombudsman as a state institution that has the authority to provide

public services in supervising both those organized by state and government administrators, including those organized by State-Owned Enterprises, Regional-Owned Enterprises, and State-Owned Legal Entities as well as private or individual entities that are given the duties stipulated in Article 1 number 1 of the Law of the Republic of Indonesia Number 37 of 2008 concerning The Ombudsman of the Republic of Indonesia [9] gives autonomy to the Regions to establish representatives of the Ombudsman in their respective provinces or districts/cities as per the urgency.

The Ombudsman can help resolve disputes between the public and public service providers related to public service tariffs. Imposing administrative sanctions on public service providers who are proven to have committed maladministration. The Ombudsman can provide recommendations to public service providers to improve their service systems to be more transparent, accountable, and responsive. The existence of contrary norms or In Harmonization in Article 43 Paragraph (1) of Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia with the Jurisprudence of the Constitutional Court (MK) Number: 62/PUU- VIII/2010 shows that the existence of the Ombudsman does not have full authorization in its authority in providing advocacy for dispute resolution in the field of public services [10]

This study aims to analyze the authority of the Ombudsman of the Republic of Indonesia in alternative dispute resolution, as well as evaluate the effectiveness of the Ombudsman's role in providing fair solutions for the community, especially in the authority of the Ombudsman in resolving disputes in an alternative manner for maladministration disputes. The background of this research uses data and information from cases handled by the Ombudsman of the Republic of Indonesia.

2. Literature Review

2.1. Theoretical Review of Public Service Implementation

According to Article 1 number 2 of Law Number 25 of 2009 concerning Public Services, public service providers are any state organizing institutions, corporations, independent institutions formed by law, and other legal entities that carry out public service activities. The implementation of public services includes a series of activities to meet the needs of the community for goods, services, and/or administrative services in accordance with the provisions of laws and regulations. The principles of public service include: Public interest, openness and transparency and legal certainty. Harbani Pasalong stated that public service is any government activity to the community that provides benefits and satisfaction, although it is not always in the form of physical products. Important elements of public services include: Service providers, service recipients, types of services and customer satisfaction.

According to Article 1 number 1 of Law Number 37 of 2008, the Ombudsman of the Republic of Indonesia is a state institution that has the authority to supervise the implementation of public services, both by government agencies and legal entities and individuals financed from the State Budget/Regional Budget. The duties of the Ombudsman (Article 7 of Law No. 37/2008) are: Receive and examine reports of alleged maladministration, conduct investigations on their own initiative, coordinate and cooperate with various institutions, prevent maladministration, provide recommendations and submit reports on the results of supervision. As for the Ombudsman's authority (Article 8 paragraphs 1 and 2), among others, namely: Requesting information and documents, summoning related parties, completing reports through mediation or conciliation, issuing recommendations including compensation and rehabilitation, announcing the results of findings to the public. The Ombudsman can also submit suggestions for organizational/procedural improvements to the President or the House of Representatives as a form of preventing maladministration. This authority is attributive because it is given directly by law and is independent.

Maladministration is defined in Law No. 37 of 2008 as unlawful acts, abuse of authority, negligence, or neglect of legal obligations in public services. This can occur in the form of procedural irregularities, abuse of authority, unclear service mechanisms. In the theory of administrative law, government actions are distinguished, among others, namely: Legal actions (*rechtshandeling*) based on legal norms and causing legal consequences and factual/material actions (*materielhandeling*), which are real actions without the intention of causing legal consequences.

The main causes of maladministration include: lack of transparency, limited access to public information, culture of corruption that undermines government efficiency, weak

supervision, and weak internal/external control system. The Ombudsman has a strategic role in supervising and cracking down on allegations of maladministration to ensure the fulfillment of people's rights to fair and professional public services.

2.2. Legal Concepts in the Public Administration System

The concept of a pseudo or quasi judicial body refers to an institution that has a function similar to judicial power, but is not fully part of the formal judicial system. This institution has the authority to resolve disputes or enforce the law in certain areas, although it is not authorized to impose criminal or civil verdicts in full like judicial institutions in general.

In Indonesia, the existence of quasi-judicial institutions has obtained constitutional recognition as mentioned in Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, as well as in Law Number 48 of 2009 concerning Judicial Power. The article provides space for the establishment of independent state institutions that carry out quasi-judicial functions[11]

Institutions that carry out quasi-judicial functions consist of: the Business Competition Supervisory Commission (ICC), the Indonesian Broadcasting Commission (KPI), the Central and Regional Information Commission, the Election Supervisory Agency (Bawaslu), and the Ombudsman of the Republic of Indonesia. These institutions play an important role in the resolution of administrative and ethical disputes within a specific scope, as well as acting as a mechanism for oversight of power. Although not entirely equivalent to the judiciary, they have a limited adjudicative function, in accordance with the authority granted by law.

Alternative Dispute Resolution (ADR) is a mechanism for resolving conflicts outside of court through non-litigation means, such as negotiation, mediation, conciliation, arbitration, or expert judgment. The definition of ADR is contained in Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution[12]. The ADR provides freedom for the parties to determine the agreed settlement procedure, without court intervention. Article 11 paragraph (2) of Law No. 30 of 1999 emphasizes that the court is obliged to refuse to intervene if the parties have chosen to resolve the dispute through ADR. In accordance with Article 6 paragraph (7) of the Law, the results of ADR are final and binding, and must be carried out in good faith by the parties, and registered with the District Court no later than 30 days after the agreement is signed.

The concept of good governance is a fundamental principle in the implementation of democratic and accountable public administration. According to the United Nations Development Programme (UNDP, 1997), there are nine main principles of good governance consisting of: Accountability, community participation, transparency, efficiency and effectiveness, equality, rule of law, strategic vision, responsiveness to public needs, consensus-oriented. A government that reflects the principles of good governance must be able to involve all stakeholders fairly and openly, ensure legal certainty, and ensure that development priorities reflect community consensus and alignment with vulnerable or marginalized groups.

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Tujuan utama otonomi daerah antara lain yaitu: Memperkuat demokrasi sosial, menampung dan menyalurkan aspirasi masyarakat, mendorong partisipasi masyarakat dalam pembangunan, dan menyesuaikan kebijakan nasional dengan kebutuhan daerah. Otonomi daerah merupakan bentuk implementasi prinsip subsidiaritas, di mana urusan pemerintahan ditangani oleh otoritas terendah yang paling dekat dengan masyarakat, guna meningkatkan efisiensi dan responsivitas pemerintahan.

The main objectives of regional autonomy include: Strengthening social democracy, accommodating and channeling community aspirations, encouraging community participation in development, and adapting national policies to regional needs. Regional autonomy is a form of implementation of the principle of subsidiarity, where government

affairs are handled by the lowest authority closest to the community, in order to increase the efficiency and responsiveness of government.

2.3. Legal Theory in the Aspect of Public Service Implementation

According to Soerjono Soekanto, legal protection is a function of the law to provide legal certainty to every individual in enjoying his rights and obligations. Legal protection aims to make the community have guidelines in their behavior, so as to create social order and peace. In his view, legal protection is divided into two main forms, namely: Preventive Legal Protection, which is preventive protection before a violation of the law occurs. This can be in the form of making laws and regulations, legal socialization, to community development and Repressive Legal Protection, which is the protection provided after the occurrence of a violation of the law, which is manifested in the form of law enforcement through mechanisms such as judicial processes (criminal and civil), arbitration, or mediation[14].

Gustav Radbruch, a German legal philosopher, argued that legal certainty is one of the three basic values in law besides justice and utility. In theory, legal certainty has an important role in creating social order and ensuring that the law can be enforced consistently and fairly. Radbruch distinguishes three forms of legal certainty, namely: Formal legal certainty, i.e. the law must be formulated in writing, publicly announced, and accessible to all parties, Material legal certainty, i.e. the law must be clear, not multi-interpreted, and non-discriminatory in its application. and Procedural legal certainty, i.e. the implementation of the law must go through clear procedures and ensure equal treatment for all[15]. Through the concept of Radbruchsche Formel, Radbruch asserts that if a law is substantially extreme injustice, then it loses its legitimacy and can be considered not a law. This shows that the law should not conflict with the values of justice, and when there is a conflict between legal certainty and justice, then justice must take precedence.

Legal reconstruction is an effort to review, update, and improve legal systems and norms to be relevant to the needs and dynamics of society. Legal reconstruction includes not only changes in the text of the law, but also an overhaul of law enforcement practices, institutional structures, and the values underlying the law. The main objectives of legal reconstruction include: Adapting the law to the times, including social, technological, and societal changes, Increasing the effectiveness of the law in achieving national development goals, Removing discriminatory or unfair legal provisions, Ensuring the protection of human rights in accordance with international standards, and providing legal certainty by tidying up non-synchronous legal norms.

Teori kewenangan menjelaskan dasar dan batas kekuasaan suatu lembaga atau pejabat publik untuk bertindak dalam kerangka hukum. Dalam hukum tata negara, kewenangan merupakan hak yang diberikan oleh hukum kepada suatu subjek hukum publik untuk melakukan tindakan tertentu dalam rangka menjalankan fungsi pemerintahan. Menurut H.D. Stout, kewenangan berasal dari sistem organisasi pemerintahan yang mengatur perolehan dan penggunaan wewenang oleh badan atau pejabat publik dalam relasi hukum publik[16].

In Indonesian constitutional practice, authority is classified into three main forms: Attribution, which is the granting of authority by law to state institutions or officials to carry out certain tasks. For example, the president's authority is regulated in the 1945 Constitution. Delegation, which is the delegation of part of authority from one institution to another. Delegation is always preceded by attribution. Mandate, which is the granting of power by superiors to subordinates to carry out certain tasks on behalf of the mandater. In this case, the responsibility remains with the mandater. The application of the theory of authority is very important to maintain checks and balances between state institutions and prevent abuse of power. This theory is also the basis for assessing the legality of an administrative action in the implementation of public services.

3. Proposed Methods

3.1. Research Type

Normative *law research* is a type of research that examines the internal aspects of positive law with a focus on the problem of norms [17]. The focus of the research lies on legal issues arising from the non-conformity of norms, with the aim of producing recommendations for improvement in the form of reconstruction of the Ombudsman's authority in advocating for public service disputes or maladministration, based on pseudo/quasi-judicial principles.

3.2. Problem Approach

In this legal research, three relevant approaches are used based on legal issues in the form of disharmonization between Article 43 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia and the Constitutional Court Decision Number 62/PUU-VIII/2010. First, the statute approach that analyzes official legal texts such as laws and court decisions, especially related to the Ombudsman's authority in supervising public services and the advocacy function in alternative dispute resolution. Second, a conceptual approach that examines legal concepts such as pseudo/quasi-judicial, alternative dispute resolution, good governance, and legal theories such as Soerjono Soekanto's Legal Protection Theory and Gustav Radbruch's Legal Certainty Theory. Third, the case approach that analyzes the Constitutional Court Decision Number 62/PUU-VIII/2010 to understand the application of the law in practice, especially in the resolution of maladministration disputes by the Ombudsman.

3.3. Source of Legal Materials

The sources of legal materials in this study consist of three types, namely primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations and court decisions that are directly related to research problems, such as the 1945 Constitution of the Republic of Indonesia, various laws related to the Ombudsman, public services, judicial power, and the Constitutional Court Decision Number 62/PUU-VIII/2010. Secondary legal materials include the results of research and scientific works by legal experts who provide explanations and analyses of primary legal materials, especially regarding the resolution of maladministration disputes by the Ombudsman. Meanwhile, tertiary legal materials serve as a support to explain primary and secondary materials, in the form of legal dictionaries, general dictionaries, encyclopedias, and other sources that provide additional instructions and information related to law.

3.4. Legal Material Collection Techniques

The technique of collecting legal materials in normative juridical research is carried out through library research, namely by analyzing problems based on legal principles and norms contained in laws and regulations in Indonesia and jurisprudence, especially the Constitutional Court Decision Number 62/PUU-VIII/2010. This technique is commonly used in normative research that focuses on the collection of primary and secondary legal materials, including tracing various relevant laws and regulations, such as Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.

3.5. Legal Material Processing Techniques

The legal material processing technique in this study is carried out through three stages, namely identification, validation, and utilization of legal sources. The first stage, *identification of legal sources*, is carried out by identifying legal texts and court decisions that are relevant to the topic of research, especially regarding the disharmonization between Article 43 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia and the Constitutional Court Decision Number 62/PUU-VIII/2010, by using the right keywords and phrases. The second stage, *validation of legal sources*, aims to ensure the authenticity, accuracy, and reliability of legal sources through verification and evaluation of their relevance and credibility. The third stage, *utilization of legal sources*, is the effective use of primary and secondary legal materials to build a strong legal argumentation foundation in the analysis and overall research process.

3.6. Legal Material Analysis

The analysis of legal materials in this study is carried out comprehensively to explore the meaning and analyze the legal material through a systematic process that includes examination, interpretation, and evaluation of legal sources in order to identify legal principles and gain an understanding of the application of the law. The approach used is qualitative prescriptive with an inductive method, where an in-depth analysis is carried out to formulate certain actions or policies that produce legal findings as a basis for reconstructing the rules, especially the Constitutional Court Decision Number 62/PUU-VIII/2010 in the context of the resolution of maladministration disputes by the Ombudsman which is contrary to Article 43 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. The inductive method is used by drawing general conclusions based on the specific aspects analyzed.

4. Results and Discussion

4.1. Quasi Judicial Ombudsman: Measuring Legal Certainty After Constitutional Court Decision No. 62/PUU-VIII/2010

The legal certainty of Gustav Radbruch, states that it is one of the three basic values of law, along with justice and utility. In the context of the authority to administer public services, Radbruch's theory of legal certainty provides a foothold that government actions must be based on clear, written, and accessible regulations to the public[18]. Legal certainty ensures that all parties, both providers and service recipients, have a common understanding of rights, obligations, and procedures in the implementation of public services. This is essential to prevent abuse of authority and ensure transparency and accountability[19].

Radbruch also emphasized the importance of "formal justice," i.e. the law must be applied consistently without discrimination. In public services, this means that all people have equal access to services without any differential treatment based on social, economic, or political background[20]. Legal certainty not only ensures that public service regulations are complied with, but also that their implementation is consistent with the principles of justice and does not violate the human rights of citizens. Thus, this theory encourages public service providers to always act within the framework of the applicable law.

However, Radbruch also warns of the dangers of "unjust law", where legal certainty alone is not enough if the rules themselves contain injustice or do not provide benefits to society. In the context of public services, this becomes relevant when existing regulations actually hinder the effectiveness of services or disproportionately burden the community[21]. Therefore, Radbruch's theory of legal certainty in the authority of public services emphasizes the need for a balance between certainty, justice, and utility in order for law to function as an instrument that truly serves society.

After the Constitutional Court (MK) Decision Number 62/PUU-VIII/2010, there is a potential for harmonization[10] between the norms regulated in Article 43 of Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (ORI)[6] and the results of the Constitutional Court's decision. Article 43 paragraph (1): "The Ombudsman may establish an Ombudsman representative in the provincial or district/city area if deemed necessary." The Constitutional Court (MK) Decision No. 62/PUU-VIII/2010 discusses objections to the provisions of Article 46 paragraphs (1) and (2) of Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (ORI) and Article 1 number 13 of Law No. 25 of 2009 concerning Public Services. Analysis related to legal certainty in the authority of the Ombudsman after the decision that the Applicant stated that the provisions of Article 46 of the ORI Law and Article 1 number 13 of the Public Service Law could threaten the existence of the Regional Ombudsman which existed for a long time before Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (ORI) was promulgated. Therefore, it can be considered a violation of the principle of regional autonomy as stipulated in Article 18 paragraphs (2) and (6) of the 1945 Constitution[22].

The existence of harmonization in the article is contrary to the principle of legal certainty guaranteed by Article 28D paragraph (1) of the 1945 Constitution because it creates uncertainty for regional supervisory institutions. The decision of the Constitutional Court (MK) decided that: Article 46 paragraphs (1) and (2) of the ORI Law are declared to be contrary to Article 18 paragraph (2), 18 paragraph (6), and 28D paragraph (1) of the 1945 Constitution because it eliminates the authority of the regions to use the term "Ombudsman" even though it has existed for a long time.

Article 1 number 13 of the Public Service Law is declared to be contrary to Article 28D paragraph (1) of the 1945 Constitution because it defines the Ombudsman as a state institution, so that the Regional Ombudsman institution is not legally recognized. The Constitutional Court (MK) emphasized that the restrictions on regional supervisory institutions are not in line with the spirit of decentralization and community participation in the supervision of public services.

This ruling strengthens legal certainty for the previously established Regional Ombudsman, protecting them from the threat of dissolution due to the new regulations. In the principle of regional autonomy, it recognizes the authority of the regions to establish public oversight institutions, in line with the principles of democracy and decentralization. The existence of a public supervision function avoids a monopoly of supervision by one institution at the central level, which can lead to inefficiency and limited access for the community in the regions.

The Constitutional Court (MK) views that the existence of the Regional Ombudsman has provided real benefits in supervising public services and guaranteeing the rights of the community. The prohibition of the use of the term "Ombudsman" is considered unconstitutional because it limits the participation of communities and regions in government supervision and is contrary to the principles of democracy. The Central and Regional Governments need to align regulations so that they do not overlap with the principle of regional autonomy by strengthening regional ombudsmen by providing clear legal recognition and ensuring their independence in the supervision of public services.

The decision of the Constitutional Court (MK) Number 62/PUU-VIII/2010 on Article 46 of the ORI Law and Article 1 number 13 of the Public Service Law implies that the formation of representative Ombudsman in the regions depends on central policy. This is contrary to the spirit of decentralization and regional autonomy recognized in Article 18 of the 1945 Constitution and emphasized in the Constitutional Court (MK) Decision Number 62/PUU-VIII/2010. In other words, this norm hinders regional initiatives to establish supervisory institutions that suit their local needs, as had been done by some regions before the existence of the ORI Law.

Principle of Legal Certainty (Article 28D paragraph (1) of the 1945 Constitution): The authority of Centralization and Decentralization can be seen in Law Number 9 of 2015 (amendment to Law Number 23 of 2014) regulating local government with the principle of regional autonomy, which reflects the division of authority between the central and regional governments. reflects efforts to balance centralization and decentralization authority in local government.

Aspek sentralisasi, pemerintah pusat tetap memegang kendali strategis untuk menjaga keutuhan negara, termasuk pengawasan dan pemberian sanksi kepada pemerintah daerah serta penunjukan pejabat kepala daerah dalam situasi tertentu, seperti kekosongan jabatan. Peran DPRD sebagai mitra legislatif daerah juga terhubung dengan fungsi pengawasan yang berorientasi pada kebijakan nasional.

On the other hand, the principle of decentralization can be seen in granting autonomy to regions to regulate and manage government affairs in accordance with local characteristics, such as education, health, and infrastructure management. Regions also have the authority to prepare budgets and determine regional regulations (Perda) in accordance with the needs of their communities, as long as they do not conflict with national regulations. Overall, the law seeks to ensure coordination between the central and regional governments while providing flexibility to the regions to improve public services effectively and efficiently.

The Constitutional Court (MK) decision affirms the importance of legal certainty for public service supervisory institutions in the regions, including those that existed before the enactment of the ORI Law. Article 43 paragraph (1) which states "if deemed necessary" creates uncertainty, because the criteria for "necessary" are not clearly regulated. This has the potential to make it difficult for the community and local governments to get access to supervision services. The norm in Article 43 of the ORI Law stipulates that the representative of the Ombudsman in the region is in a hierarchical relationship with the central Ombudsman. This is contrary to the principle of self-reliance recognized in regional autonomy.

The contradiction with the Constitutional Court (MK) Decision can be seen below in the Constitutional Court (MK) Decision Number 62/PUU-VIII/2010 canceling the provision that prohibits regions from using the term "Ombudsman" and emphasizing the importance of local supervision that is closer to the community. Article 43 paragraph (1) of

the ORI Law narrows the space for regions to form independent institutions for the supervision of public services with a similar name or function.

The impact and confusion of implementation is not in accordance with the principle of decentralization so that with the centralization of the authority to form representatives, the regions lose flexibility in responding to the needs of local supervision. The impact is that the effectiveness of public services that depend on central decisions can slow down the formation of representatives in the regions, while the public's need for supervision services increases. In addition, the regional ombudsman's recognition of this norm creates ambiguity regarding the status of the Regional Ombudsman institution that was established before the ORI Law.

Based on the principle of regional autonomy, the Central and Regional Governments need to align regulations by revising Article 43 of the ORI Law which regulates a clearer mechanism related to the establishment of Regional Ombudsmen by the regions, while still considering the principles of decentralization and regional autonomy. With legal harmonization on the adjustment of the ORI Law with the Decision of the Constitutional Court (MK) No. 62/PUU-VIII/2010 to ensure legal certainty for regional supervisory institutions.

Strengthening regional institutions is by providing space for local governments to form institutions similar to the Ombudsman with formal recognition and synergy with the central Ombudsman. The central ombudsman needs to develop technical guidelines that ensure that the formation of regional representatives runs in accordance with the needs of local communities and the principle of regional autonomy.

The results of the Constitutional Court Decision of the Constitutional Court (MK) Number 62/PUU-VIII/2010 have a significant influence on the authority of the Ombudsman, especially related to the role and recognition of the Ombudsman in the regions. The decision confirms that the Regional Ombudsman that was established before Law No. 37 of 2008 is still recognized for its existence.

Article 46 paragraphs (1) and (2) of Law No. 37 of 2008 which prohibits the use of the term "Ombudsman" by other institutions is declared contrary to the 1945 Constitution and does not have binding legal force. The Constitutional Court (MK) considers that the restriction of the term "Ombudsman" to institutions that were not established under the law creates legal uncertainty, violates the right to fair legal recognition, and goes against the principle of regional autonomy. Regional authority to establish a local Ombudsman to establish a public service oversight agency, including those that use the term "Ombudsman." The restriction of the term "Ombudsman" in Law No. 37 of 2008 is considered to violate the principle of regional autonomy as stipulated in Article 18 paragraphs (2) and (6) of the 1945 Constitution.

The decision of the Constitutional Court (MK) ensures that the Regional Ombudsman that existed before the enactment of Law No. 37 of 2008 can still carry out its functions and duties without having to change its name or change its institutional form. Provisions that prohibit the use of the term "Ombudsman" have the potential to violate Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to fair legal recognition and certainty. The Constitutional Court (MK) does not limit the authority of the Ombudsman of the Republic of Indonesia (ORI) as stipulated in Law No. 37 of 2008, but emphasizes that the authority of the ORI must not eliminate or weaken the role of public oversight institutions in the regions.

Relationship Between Central and Regional Ombudsmen, the Central Ombudsman (ORI) is expected to work in a coordinated and synergistic manner with the Regional Ombudsman, but must not dominate or eliminate regional independence in managing public service supervision. The Constitutional Court (MK) Decision Number 62/PUU-VIII/2010 affirms that the authority of the Ombudsman of the Republic of Indonesia must be exercised by respecting the right of regional autonomy to form a public service supervisory institution. The existence of the Regional Ombudsman institution that had been formed before Law No. 37 of 2008. The principle of legal certainty to ensure fairness in the regulation and implementation of public supervision authority.

Based on the Constitutional Court Decision No. 62/PUU-VIII/2010, the following is the ratio decidendi analysis that is the basis for the Constitutional Court's (MK) consideration in deciding this case:

1. Legal Standing

The Constitutional Court stated that the Petitioners (including the Mayor of Makassar and other members of the Regional Ombudsman) have legal standing because their constitutional rights are harmed by Article 46 paragraph (1) and paragraph (2) of the

Ombudsman Law of the Republic of Indonesia (ORI) and Article 1 point 13 of the Public Service Law. They argue that the provision has the potential to: Limit regional autonomy in forming public service supervisory institutions (contrary to Article 18 paragraphs 2 and 6 of the 1945 Constitution). Violating the right to fair legal certainty (Article 28D paragraph 1 of the 1945 Constitution).

2. Violation of the Principle of Regional Autonomy

Article 46 of the ORI Law requires regional institutions that use the term "Ombudsman" to change their name within two years of the law coming into effect. The Constitutional Court considers this provision: It violates the principle of decentralization that guarantees regional autonomy (Article 18 paragraphs 2 and 6 of the 1945 Constitution). Reduce the discretion of local governments in forming public service supervision institutions that are in accordance with local needs.

3. Legal Uncertainty

The provisions in Article 46 paragraph (1) and paragraph (2) of the ORI Law and Article 1 point 13 of the Public Service Law are considered contrary to the principle of legal certainty (Article 28D paragraph 1 of the 1945 Constitution). Main reason: This provision raises the potential for the elimination of regional ombudsmen that already exist and function effectively, thus creating uncertainty in the implementation of public supervision.

4. Principles of Democracy

The Constitutional Court considers that the prohibition of the use of the term "Ombudsman" at the regional level harms the spirit of democracy. This limits public participation in the supervision of public services.

5. International Precedent

The Constitutional Court also considered practices in other countries such as Australia, where there are ombudsmen at the federal and state levels. This practice shows that the existence of the Ombudsman at various levels of government does not contradict each other.

Based on the above analysis, the Constitutional Court stated that Article 46 paragraphs (1) and (2) of the ORI Law and Article 1 point 13 of the Public Service Law are contrary to the 1945 Constitution and have no binding legal force. This decision emphasizes the need to respect regional autonomy and legal certainty in the management of public services.

The Ombudsman has the authority to resolve administrative disputes between the public and the government through a non-litigation mechanism known as Alternative Dispute Resolution (ADR). In this context, the Ombudsman acts as a mediator or facilitator who helps the parties find a fair solution without having to go through the court process. This approach reflects the Ombudsman's advocacy function to protect people's rights from potential maladministration by state apparatus, while encouraging the government to improve the quality of public services.

The Ombudsman's advocacy authority through ADR provides several advantages over settlement through the court. The ADR process is more flexible, cheaper, and faster, so that it can reduce the burden on the community in resolving administrative conflicts. In addition, ADR conducted by the Ombudsman emphasizes efforts to create a win-win solution between the community and the government, in contrast to the litigation approach that often results in win-lose decisions.

Ombudsman Regulation of the Republic of Indonesia Number 41 of 2019 concerning Procedures for the Prevention of Maladministration in the Implementation of Public Services is closely related to the implementation of public services and the authority of the Ombudsman in conducting advocacy[23]. The implementation of Public Services based on the Ombudsman Regulation of the Republic of Indonesia Number 41 of 2019 concerning Procedures for the Prevention of Maladministration in the Implementation of Public Services in Article 1, namely Public Services is defined as a series of activities to meet the needs of citizens for goods, services, and/or administrative services carried out by state administrators, SOEs, BUMDs, and private entities that use APBN/APBD funds. Article 2 describes the Prevention of Maladministration in the implementation of public services with three main stages:

1. Detection: Identify potential maladministration.
2. Analysis: Examine the cause and provide suggestions for improvement.
3. Advice Implementation Treatment: Ensure that the Ombudsman's recommendations are implemented.

Articles 30 - 36 in the Ombudsman Regulation of the Republic of Indonesia Number 41 of 2019 concerning Procedures for the Prevention of Maladministration in the Implementation of Public Services provide provisions on the authority to monitor, publish,

and assist the implementation of suggestions to public service providers[23]. The results of the implementation can be in the form of:

1. Fulfillment and improvement of public service standards.
2. Strengthening complaint management.
3. Regulatory and policy changes.

Ombudsman Regulation of the Republic of Indonesia Number 41 of 2019 concerning Procedures for the Prevention of Maladministration in the Implementation of Public Services Article 38 (Public Service Quality Assessment), the results of maladministration prevention activities can be used as a basis for providing opinions on the quality of public services.

Meanwhile, the authority of the ombudsman in advocacy is contained in Articles 6-17 of the Ombudsman Regulation of the Republic of Indonesia Number 41 of 2019 concerning Procedures for the Prevention of Maladministration in the Implementation of Public Services, to provide authority for the Ombudsman to identify potential maladministration through the collection of report data, surveys, and regulatory studies. This is the basis for advocacy by prioritizing strategic issues that have a wide impact. The Ombudsman analyzes the causes of maladministration and provides suggestions for improvement. In advocacy, the results of this analysis are used to urge policy changes or system improvements by organizers. The publication of findings and assistance to the organizers is a form of public advocacy to suppress the implementation of suggestions and increase service transparency. The function of the Ombudsman is as a public service supervisory institution with the authority to advocate, prevent maladministration, and oversee the implementation of suggestions. The implementation of this provision aims to improve the quality of public services and ensure the fulfillment of people's rights.

Overall, the Ombudsman's advocacy authority in resolving disputes through ADR is an effective instrument to improve access to justice for the community and improve the quality of public services. By strengthening this role, the Ombudsman can be a catalyst in creating a more responsive, transparent, and accountable government, while reducing the burden on the courts in resolving administrative disputes. This is in line with the principle of the state of law that prioritizes efficiency and justice in public services.

Based on the Constitutional Court Decision Number 62/PUU-VIII/2010, the conditions before and after the decision can be described as follows:

Before	After
Article 46 paragraphs (1) and (2) of the Ombudsman Law of the Republic of Indonesia (ORI) requires institutions in the regions that use the term "Ombudsman" to change their names.	The Constitutional Court stated that Article 46 paragraphs (1) and (2) of the ORI Law and Article 1 point 13 of the Public Service Law are contrary to the 1945 Constitution and do not have binding legal force.
Article 1 point 13 of the Public Service Law defines "Ombudsman" as a state institution, limiting the use of this term only to institutions that function under the ORI Law.	Regional ombudsmen can still use the term "Ombudsman," allowing them to operate legally under local regulations.
This policy creates a monopoly on the term "Ombudsman" by the central government, abolishing the existence of the regional Ombudsman that has been effective.	
Impact	
Regional Institutions: Regional ombudsmen such as those in Makassar and Yogyakarta are in danger of losing legal legitimacy.	Regional Institutions: Regional ombudsmen such as those in Makassar and Yogyakarta are in danger of losing legal legitimacy.
Public Oversight: Public oversight services by local ombudsmen are disrupted, creating loopholes in public services at the local level.	Public Oversight: Public oversight services by local ombudsmen are disrupted, creating loopholes in public services at the local level.

Central Limitations: The Ombudsman of the Republic of Indonesia (ORI) does not yet have the capacity and resources to cover all regions effectively.	Central Limitations: The Ombudsman of the Republic of Indonesia (ORI) does not yet have the capacity and resources to cover all regions effectively.
Advantages of the Constitutional Court's Decision on the Authority of the Ombudsman	Weaknesses of the Constitutional Court's Decision on the Ombudsman's Authority
Decentralization Reinforcement: Recognize the right of the region to establish supervisory institutions in accordance with local needs. Supporting the spirit of Article 18 paragraphs (2) and (6) of the 1945 Constitution concerning regional autonomy.	Potential Overlap of Authority: With the recognition of the regional Ombudsman, there is a risk of less effective coordination between ORI and regional institutions in handling complaints that have cross-regional elements.
Better Accessibility: Regional ombudsmen can provide faster and more efficient services compared to central-based ORIs.	Consistency of Service Standards: Regional ombudsmen may apply different standards of oversight and complaint resolution to the ORI, creating inconsistency.
Public Service Effectiveness: The existence of local ombudsmen allows for more proactive and focused supervision of public services on region-specific issues.	Regional Capacity Limitations: Not all regions have adequate human resources and budgets to establish competent regional ombudsmen.
Community Empowerment: Encouraging community participation in supervision and enforcement of good governance	Reliance on Local Policies: The existence and effectiveness of the regional ombudsman depends on the commitment of the local government, which can vary from region to region.

The Ombudsman of the Republic of Indonesia (ORI) in the regions cannot carry out judicial functions in dispute resolution because the principles inherent in the Ombudsman are pseudo/quasi-judicial and based on Alternative Dispute Resolution (ADR). The pseudo or quasi-judicial function means that the ORI has the authority to conduct investigations and provide recommendations in cases of maladministration, but does not have the legal authority to issue legally binding decisions, such as judicial institutions. The ADR approach adopted by ORI emphasizes more on mediation, negotiation, and facilitation of problem solving between the community and public service providers. In this context, ORI acts as a supervisory institution that bridges conflict resolution without having to go through a formal litigation process. These limitations reflect the role of ORI as an institution that supports the improvement of the quality of public services through a cooperative approach, not as an adjudication body that decides disputes in a final and binding manner. This aims to maintain flexibility, efficiency, and good relations between parties involved in public services.

5. Conclusion

Legal Certainty on the Authority of the Ombudsman After the Constitutional Court Decision, After the Constitutional Court Decision Number 62/PUU-VIII/2010, there was a strengthening of the legal certainty of the Ombudsman's authority in carrying out advocacy based on pseudo/quasi principles. This decision affirms the importance of the Ombudsman's actions based on clear rules that are accessible to the public, thereby ensuring transparency and accountability in the performance of their duties. However, it was found that there was a potential disharmony of norms between the articles in Law Number 37 of 2008 concerning the Ombudsman and the Constitutional Court's decision, which had the potential to create confusion in the implementation of authority. Thus, efforts are needed to adjust legal norms so that the Ombudsman's advocacy function in dealing with maladministration is more effective, in line with the principles of justice, utility, and legal certainty.

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