

CONCEPTUAL CRITICISM OF OMBUDSPRUDENCE IN INDONESIA AND THE DEVELOPMENT OF GOOD OMBUDSNORM FOR PUBLIC SERVICE PROVISION

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Citation:

Mursalim, Muliana, and Rilo Pambudi. s. 2025. "Conceptual Criticism of Ombudsprudence in Indonesia and the Development of Good Ombudsnorm for Public Service Provision". *Walisongo Law Review (Walrev)* 7 (2):160-78. <https://doi.org/10.21580/walrev.2025.7.2.28270>.

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Abstract: In practice, *Ombudsprudence* is a collection of jurisprudence that highlights the success stories of recommendations issued by the Ombudsman. Consequently, the law's desired consistency and unity in handling maladministration cannot be effectively realized. The *Ombudsprudence* did not encourage the Ombudsman to consider previous recommendations in similar cases. This was a factor in the failure to achieve the ethics, fairness, and propriety recommended by the Ombudsman. This article aims to critique the adoption of *Ombudsprudence* in Indonesia. In addition, it seeks to purify the concept of *Ombudsprudence* to make it a tool for realising *ombudsnorm* and good administrative norms in public services. This article employs a non-doctrinal approach by collecting data through literature studies and interviews. The findings indicate that *Ombudsprudence* has been misinterpreted as merely a success story in case handling by the Ombudsman, which deviates from the basic idea and original concept in the Netherlands. In fact, the Ombudsman has established non-legal norms; however, misconceptions have led to its neglect as an ombudsman norm. Therefore, it is necessary to purify the concept by examining the indicators proposed by Langbroek and Rijpkema, so that *Ombudsprudence* aims to establish *ombudsnorms* in the form of norms of propriety produced by the Ombudsman, directed at creating good administrative norms as standards for exemplary public service in Indonesia.

Ombudsprudensi dalam praktiknya merupakan kumpulan yurisprudensi yang menyoroti kisah sukses rekomendasi yang dikeluarkan oleh Ombudsman. Akibatnya, konsistensi dan kesatuan hukum yang diharapkan dalam menangani maladministrasi tidak dapat terwujud secara efektif. *Ombudsprudensi* tidak mendorong Ombudsman untuk mempertimbangkan rekomendasi sebelumnya dalam kasus serupa. Hal ini menjadi faktor kegagalan dalam mencapai etika, keadilan, dan kepatutan yang direkomendasikan oleh Ombudsman. Artikel ini bertujuan untuk mengkritisi penerapan

Ombudsprudence di Indonesia. Selain itu, artikel ini juga berupaya untuk memurnikan konsep Ombudsprudence agar dapat menjadi alat untuk mewujudkan 'ombudsnorm' dan norma administrasi yang baik dalam pelayanan publik. Artikel ini menggunakan pendekatan non-doktrinal dengan mengumpulkan data melalui studi pustaka dan wawancara. Hasil penelitian menunjukkan bahwa Ombudsprudence telah disalahartikan hanya sebagai kisah sukses dalam penanganan perkara oleh Ombudsman, yang menyimpang dari gagasan dasar dan konsep awal tentang Ombudsprudence di Belanda. Faktanya, Ombudsman telah menetapkan norma-norma non-hukum dan kesalahpahaman tersebut telah menyebabkan Ombudsprudence diabaikan sebagai norma Ombudsman. Oleh karena itu, perlu dilakukan pemurnian konsep tersebut dengan mengkaji indikator-indikator yang diajukan oleh Langbroek dan Rijpkema, sehingga Ombudsprudence bertujuan untuk menetapkan norma-norma Ombudsman yang berisi norma-norma kepatutan dan diarahkan untuk menciptakan norma-norma administrasi yang baik sebagai standar pelayanan publik yang patut dicontoh di Indonesia.

Keywords: Ombudsman; Ombudsnorm; Ombudsprudence; Good Administration Norms.

INTRODUCTION

In the contemporary era, the Ombudsman has evolved towards hybridization, namely as an institution that assesses the behavior of public officials, promotes and guarantees the fulfilment of human rights (O'Brien 2015), while also developing standards of control (Remac 2013). Recently, the Ombudsman has also transformed into an institution that shapes legal norms and codifies standards for assessing the behavior of administrative bodies (Castro 2019). In relation to the last point, a new concept called *Ombudsprudence* has emerged, which is juxtaposed with the jurisprudence of the courts (Langbroek and Rijpkema 2006).

The existence of *Ombudsprudence* is essentially inseparable from the Ombudsman's authority to issue recommendations, as *Ombudsprudence* embodies values of propriety and legal norms derived from the recommendations issued. Conceptually, *Ombudsprudence* is recognized as a collection of considerations and recommendations produced by the Ombudsman when resolving maladministration in public services (Hartono 2009). In addition, through this *Ombudsprudence*, abstract propriety and ethical norms can become a benchmark and be applied in concrete cases (Daim et al. 2022).

The adoption of *Ombudsprudence* in Indonesia has also been developed since 2009 by the Ombudsman of the Republic of Indonesia. Its existence is increasingly fundamental to realising consistency in handling public service cases reported by the public. This consistency means that every case can be resolved fairly, and the Ombudsman provides consistent recommendations when resolving similar cases. Moreover, the potential for similar cases is quite high, given the relatively high number of annual public reports. For example, in 2022,

the number of public reports related to public services reached 22,197, with 8,292 of them containing allegations of maladministration (Ombudsman RI 2023). The number of reports increased the following year to 26,461, and 3,415 were found to be maladministered (Ombudsman RI 2024a). In 2024, the number of complaints decreased to 10,837 reports; however, 10,303 of these reports were classified as maladministration and were subsequently investigated. It means that maladministration has increased quantitatively (Ombudsman RI 2025).

However, there are two fundamental problems in applying *Ombudsprudence* in Indonesia. First, *Ombudsprudence* in practice is limited to a collection of case law highlighting the success stories of recommendations issued by the Ombudsman (Ombudsman RI 2009). It is even interpreted as a book of cases that the Ombudsman handles, entitled *Ombudsprudence* (Dewi 2019). Thus, the application in Indonesia deviates from the concept developed in the Netherlands, where the idea of *Ombudsprudence* originated, which is understood as jurisprudence as a source of law for similar cases (Remac and Langbroek 2011). Consequently, the law's desired consistency and unity in handling maladministration cannot be effectively realized. Second, although it has been adopted, *Ombudsprudence* does not encourage the Ombudsman to consider previous recommendations on similar cases. It is a factor in the failure to achieve the ethics, justice, and propriety recommended by the Ombudsman. In fact, one of the Ombudsman's goals is to develop a legal culture that is fair, proper, ethical, and effective in implementing public services that the public aspires to (Hartono 2009).

Based on this explanation, this study discusses two main issues. First, it criticizes the conceptual deviations that occurred during the adoption of *Ombudsprudence* in Indonesia. Second, purifying those deviations is necessary to find the appropriate criteria and model for future *Ombudsprudence*. Because, the current *Ombudsprudence* model still places previous recommendations as a description of the successful handling of public service cases carried out by the Ombudsman, rather than as the original idea.

Undeniably, studies on the issue of *Ombudsprudence* have been conducted, but this article does not repeat previous studies. For example, research highlights the urgency of applying *Ombudsprudence* in similar cases regarding maladministration, with the main finding being that *Ombudsprudence* has binding force as a source of law (Daim et al. 2022). Nor does it intend to merely add to the legal argument that the Ombudsman is the developer of *Ombudsprudence* (Langbroek and Rijpkema 2006). Ultimately, this article aims to contribute to the refinement of the application of the concept developed by the Ombudsman through a critical examination of legal concepts. This perspective is necessary to evaluate and further promote *Ombudsprudence* as a tool for realizing “*ombudsnorm*” and good administrative norms in public services.

RESEARCH METHOD

This study employs a non-doctrinal method to critique the implementation of the concept of *Ombudsprudence* in Indonesia. This method enables the analysis of *Ombudsprudence* in its socio-political and operational contexts through the examination of Ombudsman policies, administrative practices, and legal comparisons with those of other countries (compare to Wiratraman 2019). In other words, this method aims to establish *de lege ferenda* (something that must be stated by law) to achieve ideal *Ombudsprudence*. The data were obtained in two ways: *first*, a literature study focused on the Ombudsman's annual reports and the unimplemented recommendations issued by the Ombudsman from 2018 to 2024, as well as the conception and practice of *Ombudsprudence*, including the "*Ombudsprudensi*" book and its relevance to good administration norms. *Second*, these literature findings were validated through structured interviews with the Ombudsman Commissioner and Representative Office, the Assistant for Resolution and Monitoring, and the Assistant for Recommendation and Monitoring, which the author conducted within the 2023-time frame. The data were then analyzed qualitatively with an interpretive-critical orientation and compared in practice with those from the Netherlands. However, this comparison does not imply that it is intended to adopt the absolute conception applied by the country, but rather to learn from what can be learned and adapted to the legal context and problems in Indonesia.

RESULT AND DISCUSSION

Portrait of the Issuance of Ombudsman Recommendations in Indonesia

As a product of the Ombudsman, the recommendations aim to resolve dispute issues in public services. Etymologically, a recommendation is like a 'suggestion' or 'opinion' and sometimes interpreted as advice (Hartono et al. 2003). Meanwhile, based on Article 1 para. 7 of Law No. 37 of 2008 on the Ombudsman of the Republic of Indonesia, the recommendation is the conclusion of the Ombudsman's investigative efforts against the reported person. Although it is a suggestion, the recommendation must be implemented as stated in Article 38 para. (1) *jo*. Article 39 of Law No. 37 of 2008.

However, the Ombudsman's recommendations are not merely ordinary advice or suggestions addressed to officials, as it incorporate human values (Masthuri 2005). In this regard, the Ombudsman's recommendations are part of the results of implementing their duties and functions in public service cases carried out by government officials, which contain advice or suggestions to resolve the intended case quickly. The Ombudsman's recommendation is to supervise the implementation of laws to improve the management and implementation of good governance, creating an environment conducive to services. This includes eliminating the practice of corruption, collusion, and nepotism (KKN), which is often carried out by public officials (Sujata 2002).

Empirically, the Ombudsman has issued numerous recommendations to resolve allegations of maladministration in the public service sector. Adam Setiawan's findings stated that at least from 2008 to 2018, the Ombudsman had issued 87 (eighty-seven)

recommendations with various follow-up statuses (Setiawan 2019), which, if mapped, can be seen in the table below:

Table 1
Status of Implementation of the Ombudsman Recommendations in 2008-2018

No	Recommendation Status	Sum
1	Implemented	33
2	Partially Implemented for Acceptable Reasons	10
3	Partially Implemented for Unacceptable Reasons	5
4	Not Implemented for Acceptable Reasons	5
5	Not Implemented for Unacceptable Reasons	17
6	In the process of determining the Status of Implementation	17

Source: Adam Setiawan, 2019.

Other data referenced from the Ombudsman's website shows that in the 2015-2023 period, 28 (twenty-six) recommendations were issued (Ombudsman RI 2024b). Of these, agencies/central governments are the most reported parties, namely 17 recommendations, and 11 are aimed at regional agencies. If detailed, based on the recapitulation of the data from the results of the resolution and monitoring, not all recommendations issued within that period were implemented or complied with by the reported party, the reported superior, or related parties. Only about 14 recommendations have been implemented, seven have not been implemented, while the rest are still in the monitoring stage.

Although only 25 percent of this number is not implemented, this cannot be considered *trivial*. This data indicates that the effectiveness of the Ombudsman's recommendations is insufficient. Notably, considering Setiawan's findings, as presented in Table 1 and the Ombudsman Annual Report, many recommendations have not been implemented since 2008 or have been implemented only partially for various reasons. Among the recommendations that were not implemented were:

Table 2
Some of the Ombudsman's Recommended Products that are not Implemented

No.	Recommendation Number	Forms of Maladministration
1	0001/REK/0834. 2016/ V/2018	Maladministration in the equivalence of foreign doctoral diplomas (S3) and promotion of functional positions from lecturers to professors on behalf of JPAR by the Ministry of Research, Technology, and Higher Education.
2	0002/REK/0663. 2017/ XI/2018	Maladministration in solving problems in the implementation of Lakidende University by the Minister of Research, Technology, and Higher Education and the Coordinator of Private Universities in Region IX.
3	0003/REK/0922. 2016/ XI/2018	Maladministration by the Minister of Research, Technology, and Education of the Republic of Indonesia in Handling Allegations of

		Plagiarism of Scientific Works by MZF, in the form of exceeding authority, deviations in procedures, and incompetence.
4	0001/RM.03.02-13/0062.0079.0067.0103-2016/VII/2020	Maladministration in the form of discrimination in the provision of services and procedural irregularities against the rejection of the application for registration of transfer of ownership of land by the Head of the Bantul Regency Land Office, the Head of the Kulon Progo Regency Land Office, the Head of the Yogyakarta City Land Office, the Head of the Gunungkidul Regency Land Office, and the Head of the Sleman Regency Land Office.
5	0001/RM.03.01/0593.2021/IX/2021	The Chairman of the Corruption Eradication Commission (Reported I) and the Head of the State Civil Service Agency (Reported II) committed maladministration against at least 75 Corruption Eradication Commission (KPK) employees who were declared to have obtained the results of the Nationalism Test (TWK) assessment with the category of Not Qualified (TMS), in the form of: Abuse of Authority and Improper Actions.
6	002/RM.03.01/IX/2023	The failure to revoke the Housing Office Head's Permit Letter No. 1224/KP/69 dated July 12, 1969, and the Mayor's Decision Letter No. 111 of 1999 dated August 30, 1999, as an administrative measure to ensure certainty in service provision and legal certainty for the public, as the citizens have rights to the subject matter.
7	001/RM.03.01/IV/2024	Maladministration by the Bungo Regency Government c.q. The Bungo Regency Tax and Retribution Management Agency for the issuance of Tax Assessment Notices in the Bungo Regency Government area

Source: Ombudsman RI, (processed 2025)

Lotulung explained that three main problems cause the Ombudsman's recommendations to be ineffective. First, the Ombudsman's role is limited, resulting in a suboptimal level of authority. Second, recommendations are more ethically and morally binding, making them often difficult to enforce. Third, the Ombudsman is only authorized to assess actions from a legal perspective, even though the relationship between legal aspects and opportunities often influences officials' actions (Lotulung 1993).

Furthermore, examine the recommendations issued closely, particularly during the 2015-2024 period, regardless of the type of recommendation. In that case, no one refers to the previous recommendation. Although efforts have been made to make previous recommendations as a guide or reference for the preparation of subsequent recommendations, they have not reached the stage of quoting directly (B. H. Rafinus, Vice Chairperson of the Indonesian Ombudsman, "Interview," February 22, 2023). In addition, the Ombudsman will always consider recommendations that have been issued previously, but do not explicitly mention them in substance, such as the referral process in the judicial system (M. Najih, Chairperson of the Indonesian Ombudsman, "Interview," February 22, 2023).

To date, the referral mechanism has been carried out. However, it is still at the stages of developing patterns, methods, systematics, and analysis methods in preparation for recommendations (B. Masthuri, Former Head of the Yogyakarta Ombudsman Representative Office, "Interview," February 27, 2023). There is no *guidance* on preparing referrals as practiced in courts that adhere to the concept of jurisprudence. Because so far, the paradigm that is still being developed is that every case that has been successfully handled is only positioned as a 'success story' that may be used as a reference, but not yet at the stage of making it a legal source for handling maladministration (B. Masthuri, "Interview," February 27, 2023). The Ombudsman has made previous recommendations as references, even though they have not been incorporated into the substance of the Ombudsman's opinion or analysis when resolving maladministration cases with similarities to previous cases.

If understood, there are two fundamental reasons why this kind of referral has not been implemented, based on the results of interviews with the Ombudsman leadership. First, there are no rules to guide its implementation. Second, the previous recommendations are still at the accumulation stage in a book product entitled '*Ombudsprudence*', which contains various success stories of handling maladministration cases by the Ombudsman. In addition, the deputy chairman of the Ombudsman also highlighted political issues that often place the Ombudsman's position in a vulnerable position, which tends to be underestimated by state administrators, resulting in each product still being often ignored. Then, culturally, this has not been a common practice carried out by the Ombudsman (B. H. Rafinus, "Interview," February 22, 2023).

Misconception of *Ombudsprudence* in Indonesia

The initial concept of *Ombudsprudence* is inseparable from the research conducted by Langbroek and Rijpkema in the Netherlands in the Autumn of 2002. *Ombudsprudence* is designed to address public complaints about public service cases and enhance the understanding of fair law for law enforcement and public service officials (Dewi 2019). Similar to jurisprudence, *Ombudsprudence* is intended to serve as a source of law and guidelines for the Ombudsman to handle public service cases at both regional and central levels (Remac and Langbroek 2011). Therefore, *Ombudsprudence* cannot be separated from the Ombudsman's authority in issuing recommendations, considering that *Ombudsprudence* encompasses the values of propriety and legal norms as reflected in the recommendations issued (Dewi 2019).

The results of the research are then categorized as *Ombudsprudence*, which is based on the norms of propriety that have been agreed upon by the National Ombudsman (reference to the Dutch National Ombudsman) or by comparing the norms of propriety that apply in other countries. The classification includes:

- a. Human rights include the prohibition of discrimination, the confidentiality of correspondence and telephone communications, the right to peaceful use of one's residence, privacy, and freedom from unlawful interference.

- b. Material propriety encompasses the prohibition of abuse of authority, *reasonableness* (*redelijkheid*), considering the balance between various related interests, courtesy, legal certainty (enforcing court decisions and meeting expectations), and equality.
- c. Formal propriety includes impartiality, listening to both sides, consideration/motivation, and fair play.
- d. Prudence: Norms *and* instructions, including speed of action; administrative meticulousness; active and adequate provision of information; active and adequate collection of information; adequate organizational structure and procedures; proper service (courteous and ready to serve); and professionalism (Langbroek and Rijpkema 2006; Hartono 2009).

However, the results of adoption that developed in Indonesia turned out to have a different conception. It is at least evident from reading the *Ombudsprudence* that the Ombudsman has developed, as well as the results of interviews conducted with the Ombudsman commissioner. Mokhammad Najih, for instance, interpreted *Ombudsprudence* as a positive experience resulting from the Ombudsman's public reports on alleged maladministration in the implementation of public services (M. Najih, "Interview," February 22, 2023). As a good experience, *Ombudsprudence* comes in several forms: (i) from the process of the Ombudsman's action mechanism; (ii) through the examination of reports resolved through mediation and reconciliation; (iii) completion of the mass report through corrective action, with the issuance of the Final Results of the Research Report; (iv) the Ombudsman's recommendation as a result of the non-implementation of corrective action. Thus, in this case, recommendations are not the only background for the presence of *Ombudsprudence* (M. Najih, "Interview," February 22, 2023).

The exact meaning was also conveyed by Rafinus, who defined *Ombudsprudence* as a collection of the Ombudsman's investigative results, especially in the community report settlement group. In the Ombudsman, the handling is broadly divided into two groups: completing community reports and preventing maladministration (B. H. Rafinus, "Interview," February 22, 2023). On the other hand, the Assistant for Resolution and Monitoring Unit, Asep Cahyana explained the same thing, *Ombudsprudence* is not only related to recommendations, but a collection of cases or lessons learned and even hopes to be a 'best practice' for every method of handling reports by the Ombudsman from clarification, investigation, conciliation, mediation, corrective action, to recommendations and their results, all of which are accommodated in it. Therefore, in *Ombudsprudence*, no cases are found that do not benefit the complainant (A. Cahyana, "Interview," February 22, 2023).

Ombudsprudence, according to Cahyana, emphasizes handling reports for specific substances. One *Ombudsprudence* with the same substance is resolved in two ways, and the results are equally effective. It depends on which reader, an assistant Ombudsman, will use it. The weight is not on legal considerations, so *Ombudsprudence* does not emphasize legal considerations (A. Cahyana, "Interview," February 22, 2023).

Ratna Sari Dewi (Assistant for Recommendation and Monitoring Unit) stated—which was also confirmed during the interview—that it is inappropriate if *Ombudsprudence* is only sourced from the Ombudsman's recommendations (Dewi 2019; R. S. Dewi, "Interview," February 22, 2023). Then she added that *Ombudsprudence* is undoubtedly not the same as jurisprudence, which is a term in law referring to a collection of court decisions. *Ombudsprudence* is a collection of cases, better known as Community Reports, that are reported to the Ombudsman. The Community Report that enters ' *Ombudsprudence*' originates from the selection of community reports submitted to the Ombudsman Representative in the Province and the report that is forwarded to the Ombudsman RI, following a series of sorting and selection processes (R. S. Dewi, "Interview," February 22, 2023).

Interestingly, she further stated that the form and formulation of the preparation of " *Ombudsprudence*" can change over time in accordance with the development and dynamics of public service supervision by the Ombudsman (R. S. Dewi, "Interview," February 22, 2023). The starting point that needs to be conveyed in *Ombudsprudence* is to explain the handling of Community Reports that contain maladministration, a brief description of the report, and the final process of settlement. Then it is described that the things that must be considered in the substance are:

- a. Reporter and Reported Party (usually the Complainant and Reported are not explicitly named by the person);
- b. The reported substance has legal implications for public services, so it should be included in the Ombudsman's purview. It is analyzed based on the complexity of the problem and the complexity of maladministration (violations);
- c. It is a public interest and a problem often reported by the public;
- d. It is beneficial for legal awareness, human rights, bureaucratic reform, good governance, and the provision of excellent public services. It is a consideration in selecting cases and Community Reports included in the *Ombudsprudence*.

From the results of the interviews, two fundamental problems in the adoption of *Ombudsprudence* in Indonesia are identified when examined from a comparative perspective with the Netherlands. First, there is a misunderstanding of the concept of *Ombudsprudence*, which tends to be a method or approach to handling cases of maladministration. Moreover, *Ombudsprudence* was born out of various reasons, including the need for rapid response, corrective action, and recommendations. Narrowing the meaning to the method and extending it to the basis of its inception is actually not in line with the initial concept introduced by Langbroek and Rijpkema, which clearly comes from a combination of two words: Ombudsman and Prudence. Furthermore, it is stated, "we have tried to emphasize the individual character of the normative framework of the Ombudsman by referring to its decisions as ' *Ombudsprudence*' as an ethical counterpart to the legal jurisprudence" (Langbroek and Rijpkema 2006). This statement explicitly explains that *Ombudsprudence* is a counterpart to Jurisprudence, which forms a normative framework or rules that are agreed

upon or result from each recommendation given. This normative framework is then juxtaposed with the term '*ombudsnorm*,' which refers to proprietary norms produced by the Ombudsman related to good administration (Langbroek and Rijpkema 2006).

Second, from an implementation perspective, *Ombudsprudence* in Indonesia is not intended to be a formal source of law—as is jurisprudence—but rather a list of categorized cases that have been resolved. This application is contrary to the intention of its initiators, who believed that *Ombudsprudence* would be able to produce *ombudsnorms* that would complement the deficiency of statutory law in resolving cases of maladministration in public services. More specifically, its existence is increasingly fundamental to realizing consistency in handling public service cases reported by the public. This consistency means that every case can be resolved fairly, and the Ombudsman provides consistent recommendations when resolving similar cases. However, the expected consistency cannot be effectively realized because the desired goal of this preparation is limited to a collection of case laws that showcase success stories from the Ombudsman, which have been compiled in the form of the *Ombudsprudensi* book (Ombudsman RI 2009).

In practice, the impact of implementing *Ombudsprudence* in the Netherlands has not only resulted in norms of propriety in handling maladministration but has also become a source of law and legal consideration for similar cases. For example, by looking at the case of handcuffing of Romanian citizens who were involved as street bandits and arrested by the local police, as stated in *the Ombudsman's Rapport De Nationale No. 2017/078* dated July 10, 2017. The recommendation was issued in response to complaints from several lawyers at a law firm representing numerous Romanian clients. The National Ombudsman revealed that lawyers have filed a total of 199 complaints with various police units, almost all of which are related to the above, namely the use of unnecessary handcuffs during arrests. The reason for the complaint was due to concerns about certain rights of a suspect being disrespected when they were transferred to a police station and detained.

Interestingly, in its summary of recommendations, the National Ombudsman has stated that it will assess future complaints related to this based on the *report*. Since the investigation into the use of handcuffs reveals that, although all the officials involved stated they did not use handcuffs as standard, there appears to be a general impression that handcuffs were necessary because the Romanian suspects were attempting to evade arrest. In fact, it was straightforwardly said in the description of the report that the National Ombudsman would make a list of fundamental principles that must be followed by the police in carrying out handcuffs (De Nationale Ombudsman 2017).

One of the fundamental principles that emerged from this dispute settlement process was that, even under *Article 22 of the van de Ambtsinstructie*, the police could use handcuffs for transport if there was a danger of flight or of harm to people. However, the National Ombudsman upholds the principle that the image generally known among the police regarding the fleeing behavior of a particular group of suspects should not be a reason to continue applying handcuffs without a judgment against individual suspects. Several factors

contribute to this consideration. For example, behavior before and during the arrest, location, and assistance from co-workers can be taken into account in decision-making. Examples of such behavior include running away from security guards or police, not standing still, speaking intensely and heatedly among his group in a foreign language, the ratio of police officers to the number of suspects, and the speed at which help can arrive at the scene.

It was further emphasized that handcuffing, although legal, must be limited and only allowed if necessary due to the danger of escape or the risk to the safety of the person, officer, or third party involved during transportation (De Nationale Ombudsman 2017). The consideration is that the right to inviolability is a fundamental right protected by the Constitution and international agreements. In principle, the use of handcuffs is a violation of fundamental rights, so it should not be done arbitrarily.

The considerations and norms outlined in the recommendations are then referred to as legal considerations in Rapport No. 2019/057, 2020/018, and 2023/014, which relate to similar cases. Thus, in practice, *Ombudsprudence* is no different from the concept of jurisprudence, which uses previous decisions as a reference and consideration to resolve subsequent cases that have similarities. Therefore, it is not accurate for Cahyana to state that *Ombudsprudence* emphasizes not the Ombudsman's legal considerations, but rather the model or method of settlement. The purpose of *Ombudsprudence* in the Netherlands is to develop *ombudsnorms* and classify them to form a legal unity that is not differentiated from similar cases.

Purification of the *Ombudsprudence* Conception in Indonesia

The expansion and change of direction of the conception show a discrepancy with the original ideas of its originators. Masthuri, for example, one of the parties involved in formulating *Ombudsprudence* in the early period, sought the same conception as that developed by the Langbroek and Rijkema research projects, namely a product that became a source of law through various Ombudsman representatives in the region. This idea itself was prepared before many representatives, with the hope that it would make it easier for the representative office to resolve if they found the same case, the same pattern, the same rules, so that the formulation of opinions and conclusions would be the same. In addition, based on experience abroad, agencies that do not implement the Ombudsman's recommendations and the complainant then submit this case to the court, so the court tends to follow the Ombudsman's opinion, even though it is not an obligation and is not binding for the court, but because of the legal and ethical culture that has been built. Thus, *Ombudsprudence* is used as a precedent for these agencies (B. Masthuri, "Interview," February 27, 2023).

Then, he repeated what was conveyed by Sunaryati Hartono as the owner of the first idea, saying that the desired characteristic of *Ombudsprudence* is to emulate the practice of jurisprudence in Indonesia (B. Masthuri, "Interview," February 27, 2023). In fact, Hartono, in his article, emphatically stated that *Ombudsprudence* is a collection of recommendations inspired by the practice in the Netherlands, developed by Langbroek and Rijkema. *Ombudsprudence* is expected to serve as a reference for Indonesian Ombudsman personnel, as

well as jurisprudence, which serves as a reference for judges, experts, and other law enforcement officials (Hartono 2009). The reference here emphasizes that *Ombudsprudence* is intended to be one of the legal resources in addition to laws and regulations when it comes to resolving public service disputes.

In the process of preparing the *Ombudsprudence* itself, as admitted by Hartono, she was influenced and followed the processes and procedures used by the West Java Jurisprudence Inventory Team, which Sunaryati Hartono chaired at that time. It was explained that the method of compiling it, *mutatis mutandis*, was the result of replication of the method used by the team. In this affirmation, what needs to be underlined the most is that the object of *Ombudsprudence*, according to Hartono, is recommendations that are considered good and important to be included in the collection of *Ombudsprudence* (Hartono 2009).

Therefore, it is imperative that, with the results of this comparison, the formulation and development of *Ombudsprudence* does not stop at the compilation stage in the form of book preparation. It is because *Ombudsprudence* has a role that is more than just a guide; it also creates legal unity and develops proper norms to realize good governance. In addition, conceptually it must also be rearranged, because the expansion of the meaning given is no longer in accordance with the basic idea, and according to the author, it further dwarfs the essence of *Ombudsprudence*, which is limited to the success story of the Ombudsman.

Regarding the indicators of a recommendation, it can be used as *Ombudsprudence* according to Langbroek and Rijpkema, not on whether or not a recommendation is implemented. According to both, the most important point is whether or not the National Ombudsman forms norms in his opinion. The absence of norms in this context has several drawbacks. **First**, for the parties involved, the decision may be more difficult to accept, due to the finding that the action was appropriate or did not arise suddenly. **Second**, the decision does not guide administrative bodies on how they should act in the future to meet the appropriate standards of administrative conduct. Finally, the ruling does not provide guidance to citizens on what they can expect from administrative bodies (Langbroek and Rijpkema 2006). Therefore, it is emphasized that the function of each Ombudsman's recommendation is prospective, serving as a guideline for the actions of administrative officials in the future and as a standard for assessing such actions by the Ombudsman (Langbroek and Rijpkema 2006).

The question then arises, which part of the recommendation should be a reference, and what kind of recommendation criteria should be a reference? In this regard, the review is directed by juxtaposing the jurisprudence in Indonesia. However, it is limited to outlining the important parts of a court decision that can serve as a reference for subsequent decisions in similar cases and identifying the relevant criteria through such analogies. However, it does not intend to say that the *Ombudsprudence* and jurisprudence are equal and the same. Recommendations are included as *beschickking* (decisions) while jurisprudence, which is based on court decisions, is a verdict (judgmental decision).

Based on the above-mentioned needs, according to Peter de Cruz, a judge's decision is binding, not based on his *obiter dicta*, but on the *ratio decidendi* (Cruz 1995 in Aditya 2020). Because, in the precedent theory, the judge's consideration has an authoritative binding force over the same. Thus, the jurisprudence law here does not mean that the judge creates the rule of law, but rather the authoritative consideration of the judge, which is then considered a rule for other courts to follow. Abraham Amos also emphasized that the judge's consideration is an inseparable part of his decision and has a legally binding force that can be formulated as a legal rule (Aditya 2020).

According to Hartono, judges will follow the previous decision for three reasons: first, they agree with the previous decision; second, if they negate the previous decision, it has the potential to be annulled by the level of the judiciary above it; and third, for the sake of realizing legal unity and uniformity and ensuring legal certainty in similar cases. The essence of a judge's decision is said to be jurisprudence, which is then followed and guided by other judges. It is a decision that contains the value of legal innovation. This kind of decision in the view of Yahya Harahap if it has the character: (i) it can be a deviation from previous court decisions; (ii) the decision contains a new interpretation value on the formulation of the applicable law; (iii) the decision contains new principles from the previous principle, on the discovery of new principles; (iv) it can also be in the form of a *contra-legem decision* (Harahap 1997).

However, the criticism raised by Hartono, that the measure of a jurisprudence is fixed (has been guided and becomes a source of law) or not, is not based on mathematical calculations, i.e. the number of times it has been decided with the same principle on the same case, but the benchmark is more on the substance that is essentially the same as the previous view, so that it can be accepted as a standard (Hartono 2009). Thus, there is no reason to question how often other judges should follow the decisions of a single judge, whether the decisions of the same judges should be followed consecutively, or which court decisions should be followed (Lotulung 1993).

It must be acknowledged that concerns exist regarding the potential for jurisprudence to bind judges, making them overly conservative, as it is based on past events and decisions (*backward-looking*), thereby hindering their ability to adapt to the evolving community law (Gandasubrata 1998). The permanence represented by the doctrine of precedent is considered not to limit the freedom of judges to make legal discoveries; in other words, jurisprudence does not limit the independence of judges (Pompe 2012). It is reinforced by Utrecht's opinion that when a judge decides to adopt the same view or agree with and follow a previous decision, it is not interpreted as submitting another judge to the previous judge's decision (Utrecht and Djindang 1985). Benny Riyanto also criticized the anomaly of judges' freedom, specifically the attitude of judges who deviate from jurisprudence, as every judge is free and not bound by the decisions of a higher judge or a previous judge, unlike in the *Anglo-Saxon* legal system (Riyanto 2006). According to Hartono, the absolute freedom of judges will,

in reality, lead to legal uncertainty and anarchy in Indonesian jurisprudence, as it is impossible to predict what the legal regulations will be (Hartono 2002).

Lotulung argues, as in the *common law* legal system, the possibility of *judicial precedent deviation* is still open when the judge believes that the case, he is facing contains several main differences from the previous case (referred to as a “*distinguishing factor*”) so that if it is decided equally, it will actually cause injustice and violence that were previously unthinkable in imposing previous decisions. In such circumstances, there is a juridical reason or argument for the judge concerned not to apply the doctrine of precedent rigidly, but with flexibility that is appropriate a case-by-case approach (Lotulung 1993).

Taking the example of the criteria above, the Ombudsman's recommendations, which can be used as a reference actually do not lie in patterns and systematics, but in the opinion and analysis of the Ombudsman in proving the occurrence of maladministration. Meanwhile, the recommendation criteria that can be used as references or legal sources, not only for internal but also external, are:

- a. Recommendations that attract public attention.
- b. Recommendations that reflect a new approach to a legal issue.
- c. Recommendations involving various legal issues (*juridical complexity*).
- d. Recommendations that emphasize a legal aspect.
- e. Recommendations that reflect the direction of national legal development.
- f. Recommendations that concern the interests of the wider community.
- g. Recommendations that reflect the consistency of the Ombudsman's stance.

Based on this logical construction, *Ombudsprudence* is relevant to Indonesia. *Ombudsprudence*, which is based on the Ombudsman's recommendations, exemplifies the importance and urgency of the application to a similar case, which will have the following roles and functions:

- a. If the same recommendation is made for the same case, the same legal standard will be formed, primarily when the law does not regulate the problem at hand.
- b. Through the legal standards, legal certainty for the community will be further fulfilled.
- c. The existence of legal certainty is achieved through these recommendations, making the settlement of similar cases in the future more predictable and transparent.
- d. Ultimately, it can prevent the potential for disparities in the Ombudsman's opinion on the same case.

The Future *Ombudsprudence*: Efforts to Build Good Administration Norms

In contemporary developments, the Ombudsman is not only positioned to resolve disputes in the public service. It has even evolved into an institution that plays a significant role in shaping the norms of effective administration in public services within a country. Milan Remac distinguishes four control standards in creating these norms, based on practice: legality, good administration or good governance, human rights, and combating corruption, which are often combined in practice (Remac 2013).

Implementatively, when investigating a public report, the Ombudsman refers not only to existing legal rules but also to legal principles that serve as a reference in good governance. It also relies *further* on various human rights provisions. So that directly or indirectly, the Ombudsman, in providing an assessment, helps build the conception of good administration and a collection of *ombudsnorms* that contains a list of assessments of good administration, ethics, legal morality, values, and even systemically builds efforts to overcome maladministration based on norms and principles (Diamandouros 2006). Furthermore, the set of *ombudsnorms* that have been established is essentially open and can be updated continuously in line with the demands of society's rapid development.

The development of good administrative norms by the Ombudsman must be equipped with human rights principles as a measure of the impropriety of public officials' behavior. In this context, the Ombudsman must be able to clearly demonstrate why violations of legal norms are also violations of human rights and that these legal norms are specifications of human rights that protect the fundamental rights of citizens (Langbroek and Rijpkema 2006). Thus, good administrative norms are non-judicial standards, in addition to binding legal rules, produced by the Ombudsman to protect human rights (Castro 2019). Meanwhile, *ombudsnorms* are a special type of norm that forms a normative system, which, although different from laws, protects the same general values. It means that *ombudsnorms* contain a combination of legal norms, human rights norms, and good administration norms that can be used as standards for assessing and controlling the behavior of public officials. These *ombudsnorms* are then used as a source of law for handling maladministration through *Ombudsprudence*.

In addition, in many *Ombudsprudence* practices, violations of the legality of an act often result in administrative actions being assessed as violating more specific ombudsman norms. For example, abuse of authority may conflict with the principles of non-selectivity and non-discrimination. In Recommendation No. 0001/RM.03.01/0593.2021/IX/2021, related to cases of maladministration against at least 75 KPK employees who were declared to have obtained the results of the TWK assessment in the category of Not Qualified (TMS), the application of such *ombudsnorms* can be seen. This recommendation led to a rule and a value of propriety that the transition of employment status should not be selective or discriminatory, thereby harming the rights of the employees concerned. Therefore, the transfer of employment status does not mean the procurement of new employees; it is only a change in status.

One of the principles and norms given by the Ombudsman is that the mechanism for the transfer of KPK employees to ASN employees is not a mechanism for the procurement of new employees, so the transfer of KPK employees must be seen as a status transfer process, which should be for the transfer of KPK employees to ASN employees, not a process that has the potential to harm the rights of employees to continue working for the KPK (see point [5.29] of Recommendation No. 0001/RM.03.01/0593.2021/IX/2021). In addition, the transfer of KPK employees to ASN employees is a form of strengthening KPK human

resources as mandated by Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission. Thus, this recommendation provides an *ombudsnorm* in the future in the form of a transfer of employment status that “must not be selective and not detrimental to the employee concerned”.

In practice, efforts to develop such good administration norms must be supported by four initial steps. First, strengthening institutional roles and independence in the context of assessing compliance with general concepts, such as legal principles and human rights, including good administration. The Ombudsman needs to be given the authority by lawmakers to give substance to these general concepts, covering matters that are not clearly regulated in the law, but must not contradict it. In other words, the Ombudsman is given the authority to develop a normative system that is assumed by legislators but is not recognized or does not form part of the courts' authority (Remac 2013). Of course, the legality of this authority is necessary, for example, through the revision of laws that form the basis of the Ombudsman's authority to strengthen and recognize this role.

Second, the relationship between *Ombudsprudence* and good administrative norms in the Netherlands is significantly influenced by the adoption of legal principles and human rights in various decision-making processes, particularly in the formulation of recommendations. In fact, the integration of these principles must be reflected in every aspect of the Ombudsman's work (O'Brien 2015). This principle then needs to be outlined in a code of Good Administration Behavior.

Third, encourage the recommendations produced to become a source of law for other similar cases and for the rules derived from these recommendations to be used as soft law in creating a model of good administrative behavior (Castro 2019). Of course, it needs to be reiterated that the referral is more based on the quality and *ombudsnorm* produced. Although it is not binding like jurisprudence, establishing a robust legal culture and governance ethics in the realm of public services would be important if, in the future, this kind of recommendation becomes a reference or legal source for addressing similar problems. Fourth and fundamental is to purify the conception and application of *Ombudsprudence*. Although resistance is inevitable, various scientific studies on the technicalities of adopting *Ombudsprudence* must continue to be carried out incrementally. It is the gap that should be the focus of further study.

CONCLUSION

The existence of guidelines or handles in the form of *Ombudsprudence* will create consistency in the Ombudsman's stance and avoid controversial recommendations. Therefore, the Ombudsman must have the courage to use previous recommendations as a source and legal reference, and begin to compile recommendations that can be used as *Ombudsprudence*, including exploring the legal principles of published recommendations. Thus, in the future, the recommendations issued will truly have good quality standards,

especially in similar cases, and there will be no differences of opinion in each recommendation. In practice, the Ombudsman has produced ombudsnorms, such as that the transition of employee status should not be carried out selectively and to the detriment of the employees concerned. However, these standards do not become good administration norms in public services because *Ombudsprudence* in Indonesia is not intended to develop non-legal norms in the handling of maladministration or public services. In this regard, the Ombudsman needs to immediately rearrange the paradigm and model of *Ombudsprudence* to be more appropriate. The importance of *Ombudsprudence* is not only to collect various cases that have been successfully resolved, but more than that to build a legal culture and propriety norms in public services that can be a source of knowledge and development of legal science, as well as a source of law for the Ombudsman and law enforcement so that public services and their settlement can really be realized effectively and reflect certainty and justice for the victims. Especially in contemporary practice, the role of the Ombudsman is more vital, namely to be a developer of good administrative norms. [W]

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