



Power to bind ombudsman special adjudication verdict in Indonesia's state administration system

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Abstract

This paper aims to analyze the extent to which the binding power of the Ombudsman's special adjudication decision which is associated with the strength of the court's decision as well as the new authority granted by law to Ombudsman's institution to carry out special adjudication whether or not it is in accordance with the Pancasila philosophy. The research method used in this study is normative juridical using secondary data from primary legal materials, secondary legal materials and tertiary legal materials to be analyzed qualitatively. The results show that the binding power of the Ombudsman's special adjudication decision is not the same as the strength of the court's decision. In accordance with Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia and Law Number 25 of 2009 on Public Services, the function of the Ombudsman as a court institution is not found, but what is found is that the results of the Ombudsman's investigation are recommendations and Law Number 25 of 2009 on Public Services which provides The authority to carry out special adjudication is not based on the Pancasila philosophy, due to in accordance with the third principle, a balance is required between the interests of the state and the people as mandated by the precepts of unity and integrity. With regard to special adjudication, Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia and Law Number 25 of 2009 on Public Services are reviewed, in order to regulate the extent to which the Ombudsman can carry out special adjudication and set concrete sanctions if it does not carry out special adjudication of the Ombudsman.

Keywords: power, decision, special adjudication, ombudsman

Introduction

The Ombudsman of the Republic of Indonesia as a public service supervisory agency was established on 10th March, 2000 through the stipulation of Presidential Decree Number 44 of 2000, which was further strengthened by the ratification of Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia on October 7^[1]. Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia became the basis for the formation of the Ombudsman of the Republic of Indonesia. Furthermore during the reign of President Abdurrahman Wahid based on Presidential Decree Number 44 of 2000 a National Ombudsman Commission was formed^[2].

The duties of the Ombudsman of the Republic of Indonesia according to Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia are to examine reports on allegations of maladministration in the administration of public services. In carrying out these duties, the Ombudsman is authorized to resolve reports (complaints) through mediation and conciliation at the request of the parties, including making recommendations regarding the completion of reports and recommendations to pay compensation to the aggrieved party. In addition, the Ombudsman does not have the authority to sue or impose sanctions on the reported agency, but the recommendations issued to the agency aim to carry out self-correction. So that the nature of the ombudsman's recommendations are not binding and cannot be forced to be implemented^[3]. Law Number 25 of 2009 on Public Services was proposed by the President in this case the Ministry of State Apparatus Utilization and Bureaucratic Reform which was proposed and discussed with the House of Representatives in 2005. Law Number 25 of 2009 on Public Services provides additional special adjudication authority To the Ombudsman, the new authority granted by this law is based on the fact that public service providers must have an independent third party in solving problems between public service providers and the community^[4]

Through Law Number 25 of 2009 on Public Services, it is mandated to the Ombudsman to be able to carry out special adjudication, this is in accordance with Article 50 section (5) of Law Number 25 of 2009 on Public Services which states that: the Ombudsman can carry out mediation, conciliation and special adjudication". The next section also states that special adjudication must be carried out no later than 5 (five) years from the promulgation of this law, but so far the special adjudication has never been implemented. This is also influenced by the absence of the issuance of a Presidential Regulation which is mandated through Article 50 section (8) of

Law Number 25 of 2009 on Public Services which states that: "The mechanism and payment of compensation will be further regulated in a Presidential Regulation".

According to the explanation of Article 50 section (8) of Law Number 25 of 2009 on Public Services, this Presidential Regulation regulates among other things the obligation of the administrator to pay compensation which can only be paid by the leadership of the administrator after the value of the loss in question can be proven by the complainant and accepted by the administrator, with compensation paid the complaint is declared complete. With the issuance of this presidential regulation which implies that the special adjudication of the Ombudsman cannot be carried out. This problem contradicts the meaning of Pancasila which places the principle of balance in all aspects of state administration. In the third principle, called the unity of Indonesia in which there is a balance between the interests of the state and the interests of the people as stated desired by the precepts of unity and integrity ^[5]. However, with the issuance of a presidential regulation which resulted in special adjudication not being able to be carried out, this shows that there is no balance between the interests of the state and the interests of the community.

Amendment to the Ombudsman are increasingly open in line with the issuance of the Ombudsman Regulation of the Republic of Indonesia Number 31 of 2018 on Special Adjudication Mechanisms and Procedures. The regulation regulates how to carry out special adjudication that will be used in deciding adjudication containing claims for compensation by the community to public service providers for losses experienced in the field of public services. However, the Ombudsman regulation contains juridical problems because in accordance with article 25 section(1) of the Ombudsman Regulation Number 31 of 2018 on the Mechanisms and Procedures for Special Adjudication, it is stated that: "The decision of the Ombudsman's special adjudication is final, binding and must be carried out by the reported party". However, in Article 1 Number 7 of Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia, the results of the Ombudsman's investigation are only recommendations.

The new authority granted by Law Number 25 of 2009 on Public Services is deemed to be incompatible with the initial function of this institution, because on one hand the Ombudsman can issue a decision that is final, binding and must be carried out by the reported party, but on the other hand the results of the investigation The Ombudsman is merely a recommendation. In accordance with Article 7 of Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia which explains the duties of the Ombudsman, it is very different from the additional authority of the Ombudsman, called special adjudication, especially the results of the special adjudication, which can issue decisions that are final, binding and must be carried out by the reported party. Besides, the Ombudsman is not an institution that has quasi-judicial authority, so it is appropriate to question the extent of the binding power of the Ombudsman's special adjudication decision, compared to a court which clearly has the authority to implement the decision.

Research method

The researcher uses the type of research used in this paper is juridical-normative, the research that discusses doctrines or principles in legal science ^[6]. The approach used in this study are the legislative approach, conceptual approach, historical approach and comparative approach. The form of juridical-normative research is carried out as norms, rules or principles and dogmas. In the normative juridical approach, it is carried out through library research, but as long as it is necessary to enrich the research, interviews can be conducted to complement the literature study, as well as studies and approaches including legal history, comparative law and legal philosophy ^[7].

Results and Discussion

The Comparison of the power of the ombudsman's special adjudication decision with the strength of the court's decision

With the duties and functions they have, the existence of the Ombudsman is very important in fulfilling the protection and welfare of the community which is part of the state's goals ^[8]. The emergence of the Ombudsman as an independent institution that has the task of supervising public service providers provides new hope for the Indonesian people who are expected to create a government that is free from collusion, corruption and nepotism. Through Law Number 25 of 2009 on Public Services, the Ombudsman not only has the authority to make recommendations, mediation and conciliation on public service issues, but the Ombudsman is given new authority, that is to carry out special adjudication, this is as stated in Article 50 section (5) to (8) Law Number 25 of 2009 on Public Services. Special adjudication is carried out if mediation and conciliation do not find a middle point, meaning that special adjudication is the last option in the settlement of compensation. Juridical problems arise in Article 25 section (1) to section (5) of the Ombudsman Regulation Number 31 of 2018 on the Mechanisms and Procedures for Special Adjudication. The power of the special adjudication decision which is final, binding and must be carried out by the reported party is a contradiction, this is because the Ombudsman does not have jurisdiction over judicial power or it can be said that the Ombudsman is not a law enforcement agency. The formulation of article 25 section (1) of the Ombudsman Regulation Number 31 of 2018 on the Mechanisms and Procedures for Special Adjudication, it is emphasized that this special adjudication decision is final, binding and must be implemented by the reported party, but the power of the decision is parallel to the strength of the Ombudsman recommendation. After the decision is implemented, the Ombudsman monitors the decision, this is intended so that the reported party implements the decision. In the special adjudication process

the people and public service providers are in dispute, this is not parallel or even disproportionate so that it is felt that the implementation of special adjudication decisions is difficult to implement, in addition to the presidential regulation governing the mechanism and provisions for compensation has not been issued which resulted in the special adjudication could not be carried out.

Law Number 25 of 2009 on Public Services has been in effect for 13 years, but the presidential regulation has not been issued, this has resulted in the special adjudication cannot be carried out. Under Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia and in Law Number 25 of 2009 on Public Services, the function of the Ombudsman as a judicial institution was not found, but there was a results of the Ombudsman's investigation in form of recommendations. The recommendation is a different matter from the judge's decision.

The special adjudication process at the Ombudsman institution will place the Ombudsman as a judge who will produce a decision that is final, binding and must be carried out by the reported party. Article 25 section (5) of the Ombudsman Regulation of the Republic of Indonesia, states: "Public service administrators who do not implement the Ombudsman's special adjudication decision are subject to sanctions in accordance with the provisions of the legislation." It is not clearly explained regarding the sanctions from special adjudication, which means that there is a legal vacuum related to sanctions if the public service provider does not implement the Ombudsman's special adjudication decision.

Judicial power is regulated in Article 24 section (1) of the 1945 Constitution of the Republic of Indonesia which states that: "judicial power is an independent power to administer justice to uphold law and justice." In making a decision, judges are required to have knowledge in legal science both in legal theory and in legal philosophy and several sciences that aim to enrich the knowledge of the judge himself. In addition to this, judges examining and deciding cases must master legal sources and are also required to make legal discoveries and create laws to complement existing laws^[9].

The special adjudication authority of the ombudsman is related to the Pancasila philosophy

The Ombudsman obtains the authority possessed by the Ombudsman in carrying out special adjudication. The authority granted by Law Number 25 of 2009 on Public Services Besides that, authority as understood in the theory of authority is official power that comes from law, by attribution, delegation and mandate. In this case, the Ombudsman has the authority in carrying out special adjudication, which comes from Law Number 25 of 2009 on Public Services^[10]. is not in accordance with the initial function of this institution, but the authority given there is an intersection of authority between the Ombudsman institution and the judiciary.

The authority of the Ombudsman in the system of the Republic of Indonesia as can be concluded from Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia in conjunction with Law Number 25 of 2009 on Public Services is the function of supervising public services, which is useful for encouraging the realization of good and clean governance, and in exercising their authority based on the principles of decency, fairness, non-discrimination, impartiality, accountability, balance, transparency and confidentiality^[11]. This is as confirmed in Article 3 of Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia. In these two laws, the Ombudsman's authority to issue a decision is not found, besides the decision is final, binding and must be implemented by the reported party. In accordance with the understanding of legal harmonization theory, harmonization of legislation means a process of adjusting the legislation that is being drafted, so that the results of these regulations are in accordance with legal principles. In this case, harmonization of law has a very important role and must start from the planning stage to be more practical in starting the next process and with this harmonization of law also avoids rules that conflict or overlap one regulation with other regulations^[12]. In the process of forming a statutory regulation, Pancasila becomes the basis for legislators considering that Pancasila is higher than Constitution and is the source of all law in Indonesia. Pancasila as the state philosophy has a very high level of abstraction, therefore the diversity of approaches in understanding and interpreting it at a level that is easier to determine in the situation at hand. However, understanding Pancasila as a philosophical foundation and trying to draw on an easier level in certain cases^[13]. Pancasila is placed as the basis of the nation and state, Pancasila with five basic values, those are God Almighty, humanity, the value of unity, the value of deliberation and the value of social justice. These five values are derived from the form of laws and regulations in Indonesia which are expected to control behavior in the state^[14].

Law Number 25 of 2009 on Public Services which gives the authority to carry out special adjudication which is strengthened by the issuance of Ombudsman Regulation Number 31 of 2018 on Mechanisms and Procedures for Special Adjudication are not based on the Pancasila philosophy, this is because in accordance with the third principle, a balance is required between the interests of the state and the people as desired by the precepts of Indonesian unity. However, under Ombudsman's special adjudication, there are no balance between the interests of the state and the interests of the community, this is supported by a Presidential Regulation which regulates the mechanism and procedure for paying compensation which has not yet been issued so that the Ombudsman cannot carry out special adjudication.

Conclusion

The binding power of the Ombudsman's special adjudication decision is not the same as that of a court decision. In accordance with Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia and Law Number 25 of 2009 on Public Services, The researcher did not find the function of the Ombudsman as a judicial institution, but what the researcher found was that the results of the Ombudsman's investigation were

recommendations. In addition, there is still a legal vacuum from sanctions from special adjudication and the Ombudsman does not have quasi-judicial authority so that the Ombudsman cannot carry out special adjudication which can issue decisions that are final, binding and must be implemented by the reported party. Law Number 25 of 2009 on Public Services which gives the authority to carry out special adjudication which is strengthened by the issuance of Ombudsman Regulation Number 31 of 2018 on Mechanisms and Procedures for Special Adjudication not based on the Pancasila philosophy, this is because in accordance with the third principle, a balance is required between the interests of the state and the people as desired by the precepts of unity and populism. However, judging from the special adjudication of the Ombudsman, no balance can be found between the interests of the state and the interests of the community, this is supported by a Presidential Regulation which has not yet been issued so that the Ombudsman cannot carry out special adjudication.

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