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The Urgency of Human Rights Approach for combating discrimination in the case of The Indonesian Ombudsman's Performance

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Abstract: According to Law Number 37 in 2008, the Ombudsman's role is to encourage proper management and prevent improper conduct in the public sector. Therefore, the existing body of research on the Indonesian Ombudsman primarily employs the good governance framework to illustrate the Ombudsman's function in dealing with cases of mismanagement in the public sector. Meanwhile, the primary responsibility of the Ombudsman is to address a broad spectrum of issues related to public services, which includes addressing human rights concerns such as instances of discrimination against minority populations and vulnerable groups. However, this aspect has been ignored. Hence, this essay endeavours to fill the current void in the literature concerning the Indonesian Ombudsman, particularly from the perspective of human rights. This article solely utilises the normative legal method and human rights approach, which entails gathering and examining regulations, relevant literature, and reports from the Ombudsman. The results suggest that simply adopting a good governance approach is not enough to effectively address human rights violations against vulnerable and minority groups in public services. Moreover, it is imperative to implement a human rights framework in order to effectively tackle discrimination that specifically targets marginalised and minority groups.

Keywords: Human Rights; Ombudsman; Public Service; Discrimination

1. Introduction

Following the collapse of Suharto's autocratic government, President Abdurrahman Wahid implemented Presidential Decree Number 44 in 2000 to create a fresh oversight institution called the Ombudsman.[1]The establishment of the Ombudsman was a crucial aspect of the Democratic reform process, aimed at decentralisation and strengthening the rule of law, with the specific goal of eradicating the remnants of corruption left behind by the previous regime known as the new order.[2] The establishment of Ombudsman was intended to ensure the provision of efficient public services, uphold justice, and promote greater prosperity in society.[3] Hence, the primary objective of establishing the Ombudsman was to overhaul the Indonesian bureaucracy, rather than prioritise the safeguarding of human rights.[4]

Moreover, the enactment of Law Number 25 Year of 2009 regarding Public Service has strengthened the role of the Ombudsman in preventing maladministration and overseeing public service activities to promote good governance.[5]The Ombudsman is responsible for receiving reports regarding alleged maladministration within public services and initiating investigations.[6]Maladministration refers to the illegal actions of government officials that result in tangible or intangible harm to both the public and individuals.[7] Ten forms of maladministration in public service include conflict of interest, service delay, partial or improper charge, abuse of power, and discrimination.[8] TheThe Ombudsman has the authority to address cases of maladministration by employing methods such as mediation, conciliation, recommendation, advice, and specific adjudication.[9] Hence, the Ombudsman is frequently referred to as a custodian of excellence in public administration.[10]

Several studies have been undertaken to examine the function of the Ombudsman in promoting effective governance and deterring misconduct in public services. An article titled "The Yogyakarta Local Ombudsman Promoting Good

1 Marzuki, Suparman. and Riyadi, Eko. Hukum Hak Asasi Manusia, (*Yogyakarta: Pusat Studi Hak Asasi Manusia* Universitas Islam Indonesia, 2008), 313.
2 Bedner, Adriaan., "Ombudspersons in developing countries: the case of Indonesia." in *Research Handbook on the Ombudsman* (*Cheltenham: Edward Elgar Publishing,* 2018), 165.
3 Sanjaya, Benny. et.al. Inklusi. (Sleman: Aswaja Pressindo, 2017), 316.
4 Marzuki, Suparman. and Riyadi, Eko. LOC.CIT. 313.
5 Law Number 25 of the Year 2009 concerning Public Service.
6 Law Number 37 of the Year 2008 concerning the Ombudsman of The Republic of Indonesia.
7 Law Number 37 of the Year 2008 concerning the Ombudsman of The Republic of Indonesia.
8 Ombudsman Regulation Number 26 of The Year 2017 concerning receiving procedure, inspecting, and Completion of Reports.
9 Suaedy, Ahmad. "Discrimination as Maladministration, Can the Ombudsman of the Republic of Indonesia go beyond the law?." The 1st International Conference of Indonesian -Australian – Netherlands Community (IANC) on Socio-Legal Studies, "Legal Reform in Indonesia: Towards Justice ." (2017). 5.
10 Ibid 11.

Governance Through Local Support," written by scholar Melissa Crouch, mainly uses the good governance approach to evaluate the Ombudsman's effectiveness in combating corruption.[11]In his article on the Ombudsman, Adriaan Bedner takes a different approach by focusing less on human rights and instead emphasising the Ombudsman's specific role in addressing maladministration.[12]Nevertheless, these research studies fail to acknowledge the necessity for the Ombudsman to prioritise a human rights perspective in its operational efforts to eradicate maladministration.

Integrating a human rights perspective into the role of the Ombudsman is both substantively and formally justified. The primary role of the Ombudsman is to address cases of maladministration in public service that involve violations of human rights, such as discrimination against minority and vulnerable groups.[13] According to Ombudsman Regulation (Peraturan Ombudsman) Number 26 The Year 2017, discrimination is classified as a form of maladministration.[14] Furthermore, Indonesia has officially ratified several human rights conventions, including ICCPR, ICESR, UNCRPD, CRC, and CEDAW. These conventions require state parties to integrate the principle of nondiscrimination into their efforts to provide public services to citizens. Hence, the objective of this article is to address the deficiency in a human rights perspective within a study regarding the Indonesian Ombudsman.

This article contends that prioritising a robust governance framework in ombudsman initiatives, while neglecting the human rights aspect, can result in unfavourable outcomes, such as the inability to address systemic discrimination against marginalised and vulnerable populations in public administration. Therefore, it is crucial to embrace the human rights framework of the Ombudsman in order to enhance the effectiveness of the Ombudsman in addressing instances of discrimination in public service. This article will be segmented into five sections to address this matter, comprising an introduction, research methodology, literature review, results and discussion, and conclusion.

2. Research method

This article employs a doctrinal legal research method in conjunction with a human rights approach to analyze qualitative data regarding the function of the Ombudsman. While the human rights approach aims to create research to enhance

11 Crouch, Melissa. A. "The Yogyakarta local ombudsman: promoting good governance through local support." *Asian Journal of Comparative Law*, 2, (2007). 2.
12 Bedner, Adriaan. OP.CIT. 164.
13 McMillan, John. "The Ombudsman and the rule of law." *AIAL Forum*, 44, (2005): 16.
14 Ombudsman Regulation Number 26 of The Year 2017 concerning receiving procedure, inspecting, and Completion of Reports.

the realization of human rights,[15] Doctrinal legal research is utilized to analyze text, including legal theory, statutory, and Ombudsman cases pertinent to human rights issues.[16] The doctrinal legal research will investigate relevant laws concerning the Ombudsman, such as Law Number 37 of 2008 and Number 25 of 2009. Furthermore, this research primarily utilizes the human rights model of the Ombudsman as a theoretical lens to assess the Ombudsman's endeavors. Additionally, to analyze qualitative data, the documentary analysis will focus on the data regarding discrimination cases toward vulnerable and minority groups. Due to the difficulties in finding the original documents of the Ombudsman's recommendations, this research will endeavor to acquire the data from the Ombudsman's official reports and secondary sources, such as books and journals concerning the Ombudsman.

3. Literature review

Carl, Hertogh, and Kirkham categorizes the Ombudsman into four models.[17] However, the discussion in this article will be restricted to distinctions between two models, encompassing the classic Ombudsman and the Human Rights Ombudsman. These models are essential in explaining the role and function of the Ombudsman in practice. Firstly, the classic Ombudsman model was implemented in 1954 in Denmark after World War II to provide administrative justice.[18] The International Ombudsman Institute commonly defines a classical Ombudsman as a body that 'offers independent and objective consideration of complaints, aimed at correcting injustices caused to an individual as a result of maladministration.'[19] Similarly, according to Abedin's article, the core functions of the classic Ombudsman system are maladministration correction and supervision.[20] To fulfill the function, the classic Ombudsman has the authority to investigate, criticize, and publicize, but not to reverse administrative action. Hence, based on the characteristics above, the function of the classic Ombudsman model is primarily on upholding a minimum standard of fair administration and achieving good governance.[21]

15 Smith, Rhona. "Human rights-based approaches to research." In *Research Methods in Human Rights* (Taylor and Francis, 2018), 9.
16 Egan, Suzanne. "The doctrinal approach in international human rights law." In *Research Methods in Human Rights* (Taylor and Francis, 2018), 24.
17 Carl, Sabine., Hertogh, Marc., and Kirkham, Richard. "The history and evolution of the ombudsman model." In *Research Handbook on the Ombudsman. (Cheltenham: Edward Elgar Publishing,* 2018), 18.
18 Ibid 20.
19 Hertogh, Marc., & Kirkham, Richard. "The ombudsman and administrative justice: from performance promise." In *Research Handbook on the Ombudsman*(Cheltenham: Edward Elgar Publishing, 2018). 1.
20 Abedin, Najmul. "What Should be the Primary Focus of the Ombudsman Institution? Protecting Human Rights and Redressing Public Grievances versus Fighting Corruption: Emphasis on South Asia and the Commonwealth Caribbean." In *The International Ombudsman Yearbook* (International Ombudsman Institute, 2004), 152.
21 Chan, Johannes., *and Wong,* Vivian. "The Politics of the Ombudsman: The Hong Kong Experience." In *Research*

According to Linda C Reif, classic Ombudsman institutions usually refrain from expressing concern for human rights issues in their mandate.[22] Classic Ombudsman supporters argue that without explicitly expressing concern for human rights violations, in most cases, this would automatically constitute maladministration.[23] With the improvement of good governance and public services, the violation of human rights can easily be reduced.[24] In contrast to national human rights institutions, the Ombudsman is not designed as a platform for dealing with human rights issues.[25] Therefore, expressing the Ombudsman's concern about human rights issues is optional because human rights violations are automatically considered maladministration.

The classical Ombudsman model has encountered significant criticism from a human rights perspective.[26] Despite the classical Ombudsman model recognizing human rights violations as maladministration, it has been highly criticized due to the absence of vulnerable and minority groups discussion in the good governance framework. For instance, gender equality issues in public service are rarely mentioned in good governance discussions,[27] as it is the main framework of classical Ombudsman institutions. Likewise, classical Ombudsman institutions rarely employ the international human rights covenant as a reference in their endeavors, such as giving recommendations and monitoring public services. Classical Ombudsman institutions also often restrict human rights in terms of positive obligations by the government, including economic, social, and cultural rights, without considering civil and political rights.

Moreover, Linda C Reif notes that at least half of national Ombudsman institutions worldwide express their concerns about human rights protection and promotion.[28] Those institutions can also be categorized as national human rights institutions (NHRIs), with mandates and obligations to apply international and domestic human rights norms in their endeavors.[29] According to the human rights model, The primary function of an Ombudsman is to develop and enforce international

*Handbook on the Ombudsman (*Cheltenham: Edward Elgar Publishing, 2018), *97.*

22 Reif, Linda C. " Ombuds institutions: strengthening gender equality, women's access to justice and protection and promotion of women's rights." *Research Handbook on the Ombudsman (*Cheltenham: Edward Elgar Publishing, 2018). 227.

23 Chan, Johannes., and Wong, Vivian. OP.CIT. *97.*

24 Suaedy, Ahmad. OP.CIT. 20.

25 Olowu, Dejo. "Good Governance and Development Challenges in The South Pacific: The Promise of Ombudsmanship." *The International Ombudsman Year Book* (2007). 20.

26 Ibid 1.

27 Reif, Linda C. "The transplantation and adaptation: the evolution of the human rights ombudsman." *BC Third World LJ*, 31, (2011). 65.

28 Reif, Linda. C. LOC.CIT. 227.

29 Ibid 227.

human rights law at the national level, as well as monitor public administration.[30] It is contrary to classical Ombudsman institutions, which pay greater attention to improving public services by using a good governance approach while remaining silent on human rights issues.

Historically, the idea of human rights Ombudsman institutions has developed in several regions. Most are developing countries, such as South American and former Eastern Bloc countries.[31] The Human Rights Ombudsman has usually developed in post-authoritarian and post-conflict countries, such as Spain, Portugal, and Latin American countries.[32] Ombudsman institutions in these countries play two roles: overseeing maladministration and protecting human rights.[33] Between the 1970s and 1990s, Latin American countries established democratic governments.[34] Many Latin American countries had to deal with a long, traumatic history of severe human rights violations carried out by states,[35] alongside poverty and development.[36] In this period of democratization, Latin American states attempted to improve government institutions and public administration without neglecting the protection of human rights.[37] Hence, South American countries decided to establish Ombudsman institutions, which protect human rights and improve public administration.

Compared to classical Ombudsman institutions, the Human Rights Ombudsman exhibits several distinctive characteristics aimed at protecting human rights and improving the quality of public administration.[38] According to Carlos Alza Barco, the human rights ombudsman has three main features: problem solver, system fixer, and Policy Entrepreneur.[39] Problem solver involves addressing citizen complaints, system fixer signifies an institution capable of solving systemic problems, and Policy Entrepreneur refers to an agent responsible for incorporating underrepresented groups and issues into the public policy agenda.[40] Likewise, Human Rights Ombudsman institutions place a solid emphasis on particularly vulnerable groups, such as women, children, persons with disabilities, and other minority groups.[41]

30 Carl, Sabine., Hertogh, Marc., and Kirkham, Richard. OP.CIT. 23.
31 Ibid 23.
32 Barco, Carlos *Alza*. "The transposition of the ombudsman model to the human rights model domain: its role as a policy entrepreneur." *Research Handbook on the Ombudsman (Cheltenham: Edward Elgar Publishing* 2018). *183*.
33 Ibid 183.
34 Reif, Linda C. "*The ombudsman, good governance, and the international human rights system*." Vol. 79. Martinus Nijhoff Publishers (2004). 186.
35 Ibid 186.
36 Ibid 186.
37 Ibid 186.
38 Barco, Carlos Alza. OP.CIT. 189.a
39 Ibid 183.
40 Ibid 183.
41 Carl, Sabine., Hertogh, Marc., and Kirkham, Richard. LOC.CIT. 23.

Furthermore, international discourse reveals the trend of adopting a human rights approach in public services. The United Nations requires states to incorporate a human rights approach in public services to achieve nondiscrimination and equal treatment.[42] The human rights approach is needed to ensure equal treatment and nondiscrimination principles for marginalized communities due to the limitation of the good governance approach in public services, which is designed to achieve efficiency in public services and enhance economic development in states.[43] In European countries, the European Union Services of General Interest policy requires member states to employ a human rights approach to deliver public services to protect consumers from discrimination.[44]

However, adhering to a human rights approach in public services policy still needs to be improved to prevent discrimination and promote equality, requiring further tangible measures. The human rights approach should also be utilized in improving standards and monitoring public services. The human rights approach should be integrated to improve the standard or guidance of public services, paying particular attention to the individual needs of marginalized communities as the most vulnerable group in public services.[45] UN DESA argue that this approach should be employed in staff diversity training, workforce diversity promotion, public procurement, and public audit to ensure the implementation of the human rights approach in public services to promote the non-discriminatory principle.[46] In a public audit context, the Ombudsman, as a supervisory body, could utilize international human rights standards to assess the compliance of public administration bodies in implementing a human rights approach to provide public services.[47] To follow up on the assessment, the public administration could look at the Ombudsman's recommendation and conclusion as an evaluation tool for improving public services.[48]

4. Result and discussion

4.1. The Ombudsman of The Republic of Indonesia: a Classic Model

42 The United Nations High Commissioner for Human Rights." Report of the United Nations High Commissioner for Human Rights on the role of the public service as an essential component of good governance in promoting and protecting human rights." Human Rights Council (2013). 3.
43 Ibid 3.
44 Akimovska -Maletić, Iskra. "European legal framework for public services". *FACTA UNIVERSITATIS-Law and Politics,* 4 (1), (2006). 3.
45 Butler, Francis. "Improving public services: Using a human rights approach." *Institute for Public Policy Research & Department for Constitutional Affairs.* (2005). 10 – 12.
46 Ainbinder, Lisa. Et. al. "Promoting nondiscrimination in public administration: some entry points." UN DESA (2022). 3 – 4.
47 Butler, Francis. OP.CIT. 28.
48 Ainbinder, Lisa. LOC.CIT. 4.

According to the discussion of the two concepts in the previous part, the Indonesian Ombudsman can be categorized as a classical Ombudsman for two reasons. Firstly, the Indonesian Ombudsman does not express concern for human rights issues. The mandate for solving human rights cases cannot be found in The Ombudsman Act number 37 of 2008 and the Public Service Act number 25 of 2009. Despite the acknowledgment of discrimination as an element of maladministration conduct within Ombudsman Regulation Number 26 of The Year 2017, which is typically considered a human rights issue, the Ombudsman solely employs a good governance framework to address discrimination issues in public services while neglecting human rights perspective. Furthermore, although Indonesia has ratified international human rights conventions, the Indonesian Ombudsman has never employed those covenants in addressing discrimination cases in public service. For example, while Indonesia has ratified the United Nations on The Rights of Persons with Disabilities (UNCRPD) since 2011, the Ombudsman of The Republic of Indonesia (ORI) did not consider this convention in solving a discrimination case relating to a person with intellectual disability in East Kalimantan in 2017.[49]

Secondly, the Indonesian Ombudsman has been established primarily to combat corruption and implement good governance in the public sector. Following the economic and political crisis 1998, international donor organizations required the Indonesian government to apply good governance principles to eliminate corruption for financial assistance.[50] the agreement between international donor institutions and Indonesia mandated the Indonesian government to establish institutions for eradicating corruption and enforcing good governance, namely the Ombudsman.[51] before establishing the Indonesian Eradicating Corruption Commission (Komisi Pemberantasan Korupsi) in 2002, the Ombudsman was the leading actor in eradicating corruption.

To sum up, the Ombudsman of The Republic of Indonesia can be considered a classic Ombudsman institution. Several cases will be presented in the following section to illustrate how more than the classical model of the Indonesian Ombudsman is needed to address discrimination cases in public services and why the adoption of a human rights approach is required.

49 Suaedy, Ahmad. OP.CIT. 24.
50 Bedner, Adriaan. LOC.CIT. 165.
51 Ibid 165.

4.2. Adopting the Human Rights approach in Ombudsman's works is essential

For two reasons, incorporating a human rights approach in Ombudsman supervisory activities is imperative for combatting discrimination in public services. Firstly, a case-by-case approach proves inadequate in addressing structural discrimination toward vulnerable and minority groups. Secondly, goodgovernanceframeworkisinsufficientwhendealingwithmaladministration cases with human rights dimensions, such as discrimination.

Firstly, the Indonesian Ombudsman primarily relies on a case-by-case approach when addressing maladministration in public services. This approach can be characterized by the Ombudsman's tendency to wait for reports from society about maladministration cases rather than initiating an investigation. For instance, as evident in The Ombudsman Report of 2022, it is apparent that the Ombudsman proactively initiated only five investigations while handling thousands of complaints of maladministration cases. [52] Implementing the classic ombudsman model, the Ombudsman of the Republic of Indonesia focuses on a case-by-case approach and prioritizes complaints handling rather than resolving systemic or structural problems.

In contrast, Human Rights Ombudsman institutions typically take the initiative to conduct their own investigations rather than relying solely on complaints.[53] When dealing with cases involving structural and systemic human rights violations, conducting proactive investigations is an effective strategy for addressing discrimination against marginalised communities. The case-by-case approach is limited in its ability to address structural and systemic discriminations, as it prioritises individual problems over complex structural and systemic issues. In Indonesia, the Ombudsman requires assistance in addressing systemic discrimination within public services. Multiple instances substantiate this assertion.

An exemplary illustration of this issue is the Ombudsman's failure to address religious discrimination within the Indonesian education system. According to Public Service Law number 25 of the Year 2009, Education falls under the category of public services, which becomes the object of ombudsman supervision.[54] as a consequence, Education must be inclusive for all Indonesian

52 Tim Penulis. "Laporan Tahunan 2022 Mengawasi Pelayanan Publik Bagi Pemulihan Yang Lebih Kuat." Ombudsman Republik Indonesia (2022). 46 – 49.
53 Carl, Sabine., Hertogh, Marc., and Kirkham, Richard. LOC.CIT. 23.
54 Law Number 25 the Year of 2009 concerning Public Service.

citizens regardless of their religion, gender, disability, race, or socio-economic background. However, it can be noted that discrimination toward children of minority religions still occurs nowadays.

Zulfa Nur Rohman, a student from Vocational Public School 7 (SMKN 7) in Semarang in July 2016, experienced discrimination because of her religious faith.[55] Having a minority religion, she could not pass a religious exam because of the incapacity of the school to provide religious teachers for students who belong to unrecognized religions. The school had a legal reason, as Minister of Religion Regulation no. 10 of 2016 mentions that schools are only responsible for providing religious teachers for six recognized religions, without considering students who belong to unrecognized religions.[56] The school's behavior and the ministerial regulation contradict Article 18 of the ICCPR regarding the right to religion, which the Indonesian government has ratified.

Finally, the Ombudsman could have handled Zulfa's case through mediation, and Zulfa could have passed the exam. Nevertheless, as the discriminative law persists, this approach fails to resolve the underlying structural problem. To effectively address this issue, The Ombudsman should take a more comprehensive approach by providing recommendations to the Ministry of Religious Affairs to abolish the discriminative regulations against children of religious minorities rather than focusing solely on addressing individual cases, such as Zulfa's case. Without abolishing the regulation, the potential for more victims in similar cases to emerge remains. This case reveals the limitation of a case-by-case approach, which cannot address structural discrimination in public services.

Likewise, in several regions, women are still forced to wear headscarves in public schools. Several provinces in Indonesia, such as West Sumatra and South Kalimantan, and several South Sulawesi regencies have local regulations to force women to wear the hijab in schools.[57] Nevertheless, the Ombudsman needs to take more comprehensive action by recommending that local governments abolish these local regulations. This case depicts that the Ombudsman's current approach cannot combat structural discrimination toward vulnerable and minority groups. Therefore, the Ombudsman should change its approach to solve discrimination in public services.

55 Suaedy, Ahmad. OP.CIT. 21 – 22.
56 Ibid 21 – 22.
57 Human Rights Watch. "Aku Ingin Lari Jauh" Ketidakadilan Aturan Berpakaian bagi Perempuan di Indonesia. Human Rights Watch (2021). 31.

Secondly, good governance principles, as the primary framework of the Indonesian Ombudsman, is inadequate to combat discrimination. Good governance is not primarily designed to deal with discrimination issues, as it has been developed to enhance administration quality and reduce corruption.[58] In the early days of the emergence of good governance in the Netherlands in the 1930s, these principles paid narrow attention to creating proper administration.[59] Furthermore, Henk Addink adds that the focus of good governance is to ensure governments can deliver their three fundamental tasks: guaranteeing the security of society, managing the public sector effectively, and achieving the economic and social aims of the country.[60]

Additionally, the internationalization of good governance principles was heavy with economic motives. In the early 1990s, global financial organizations introduced good governance principles in their work activities.[61] They required developing countries to apply good governance principles while receiving financial assistance.[62] They assumed corruption and lousy administration were embedded in developing countries. Consequently, the financial aid agreement between global financial organizations and developing countries requires the national policies to be based on a good governance framework. The IMF, the World Bank, the WTO, the UNDP, and the OECD actively promoted good governance in developing countries.[63] Hence, these organizations focused on economic reform rather than human rights.

The rising prominence of international financial institutions and development aid organizations, along with the significant economic crises experienced by developing countries in the 1990s, led to the dissemination of good governance principles. .[64] During this period, many states required financial assistance from donor institutions. In 1998, Indonesia faced a severe financial crisis and sought financial aid from international donor institutions. Indonesia was mandated to carry out reform, which involved the creation of an Ombudsman, in order to effectively implement good governance and mitigate corruption.[65] The Indonesian Ombudsman utilises a traditional model, with good governance as the main framework. Indonesia's governance framework

58 Addink, Henk. *Good governance: Concept and context*. (Oxford: Oxford University Press, 2019), 3.
59 Ibid 9.
60 Addink, Henk. Et. al. Human rights and Good governance (Universiteit Utrecht, 2010), 7.
61 Addink, Henk. LOC.CIT. 9.a
62 Ibid 49.
63 Ibid 9.
64 Addink, Henk. OP.CIT. 7.
65 Bedner, Adriaan. OP.CIT. 165.

lacks support for the protection of human rights.The World Bank's efforts to incorporate good governance principles into Indonesian legislation have facilitated the implementation of neo-liberal projects, which have in turn enabled the enactment of legislation programmes that result in systemic violations of labour rights.[66] Hence, the international donor institutions devised the present Indonesian Ombudsman and good governance framework with the intention of attaining their objective.

Moreover, good governance only covers some aspects of human rights. Good governance principles only discuss economic, social, and cultural rights,[67] as Fulfilling these rights requires positive obligation by the government, such as providing appropriate Education, healthcare, and employment.[68] Additionally, according to the good governance perspective, civil and political rights does not constitute a component of the good governance discourse, as these rights requires a negative obligation from the government. Therefore, as discussing countries in dynamic situations to achieve good public administration, good governance maintains economic, social, and cultural rights discourse while remaining silent on civil and political rights.

Nevertheless, the government also encounters civil and political rights. The government has to deal with civil and political rights violations when providing public services for citizens. The case of Indonesia, as presented in the previous part, is the best example of when freedom of expression and freedom of religion are violated in public services. In this context, human rights values must be implemented to abolish discrimination in public services.

Based on the explanation above, good governance and case-by-case approach itself cannot solve discrimination toward vulnerable and minority groups. Therefore, it has to be combined with a human rights approach when solving maladministration cases with a human rights dimension, such as discrimination.

4.3. Incorporating Human Rights Approach in Ombudsman Supervisory Activities

The preceding section shows that the classical Ombudsman cannot effectively address discrimination against vulnerable and minority groups in public services. Consequently, the Ombudsman must embrace a human

66 Wiratraman, R. H. P., Good Governance and Legal Reform in Indonesia (Mahidol University, 2006), 4.
67 Addink, Henk. OP.CIT. 7.
68 Ibid 171.

rights approach within its supervisory activities. Embracing the human rights approach does not imply that the Indonesian Ombudsman needs to transform completely, shifting away from the classic ombudsman model to the human rights model. However, the Indonesian Ombudsman should amalgamate the classical ombudsperson framework with the human rights approach.

According to Carlos Alza Barco, tackling discrimination cases in public services requires a three-pronged approach by the Ombudsman. Firstly, the Ombudsman must shift its concentration from mere administrative compliance to actively defending human rights. Secondly, transitioning from a Case-by-case approach to a Policy Analysis approach is essential. Finally, the Ombudsman must move beyond administrative oversight to a Policy Agency.[69] Additionally, the Ombudsman must become a proactive institution and pay special attention to vulnerable and minority groups. Therefore, the Indonesian Ombudsman should adopt this framework to tackle discrimination in public services.

Firstly, the Ombudsman of The Republic of Indonesia should consider integrating its good governance framework with a human rights approach. While this proposal may not necessitate the radical shift towards the Ombudsman function to be a human rights body advocated by Carlos Alza Barco, it offers a more pragmatic and balanced solution within the Indonesian context. This approach allows The Indonesian Ombudsman to retain its established role in tackling maladministration in general while equipping them with the necessary tools to combat discrimination in public services through a human rights approach. According to Linda C. Reif, the classical ombudsman model is not incompatible with a human rights ombudsman model and can complement existing frameworks for enhanced effectiveness.[70]

The implementation of this concept requires the Indonesian Ombudsman to adopt a comprehensive and multifaceted strategy. The Ombudsman should thoroughly examine its public service oversight frameworks and standards in relation to the comprehensive human rights principles established in international covenants that Indonesia has ratified.Hence, in order to comply with these international standards, it is necessary for the Ombudsman to expand its scope beyond economic, social, and cultural rights and include civil and political rights as well.[71]In addition, the Ombudsman should implement a clearer framework for incorporating international human rights instruments

69 Barco, Carlos Alza. Ibid 194 – 199.
70 Reif, Linda C. OP.CIT. 269. 13.
71 Ibid 34.

into its investigations and complaint-handling mechanism. This method involves utilising applicable international human rights conventions, such as CEDAW, CRC, CRPD, soft law instruments, and other relevant international human rights commitments.[72]

Secondly, a critical shift for the Indonesian Ombudsman lies in transitioning from a case-by-case approach to a policy reform perspective. Due to the inherent limitations of the case-by-case approach, the policy reform agenda should become the attention of the Ombudsman in tackling structural and systemic discrimination within public services. Addressing structural discrimination necessitates far-reaching reforms beyond the individual cases approach, requiring changes in legislation and policy**.** Consequently, the Ombudsman should move beyond a case-by-case approach and focus on influencing policy-making through robust recommendations**.**[73] This shift reveals a transition from reactive logic to a proactive approach, empowering the Ombudsman to offer comprehensive solutions in combating discrimination in public services.[74] Such a proactive approach was exemplified by the Ombudsman of Peru when the Ombudsman was formulating a healthcare policy reform proposal in response to forced sterilization against women cases.[75] Moreover, The Indonesian Ombudsman should contemplate conducting proactive investigations more frequently in order to maximise the effectiveness of proactive reasoning. These proactive investigations provide a priceless opportunity to examine the potential adverse effects of policy and regulation on society.Implementing proactive investigation methods may necessitate additional resources compared to simply addressing individual complaints.[76] However, this approach can yield significant advantages for vulnerable and marginalised populations, including girls, female prisoners, indigenous individuals, and disabled individuals.[77] In a 2008 research study on Belgian ombuds institutions, it was found that the number of complaints filed by women was only half as much as those filed by men.[78]

Thirdly, a critical expansion of Indonesian Ombudsman responsibilities involves transitioning beyond mere Administrative Oversight to actively advocate policy reform agenda in the policy-making process. **T**his expanded

72 Reif, Linda C. OP.CIT. 240.
73 Ibid 197.
74 Ibid 197.
75 Ibid 199.
76 Chan, Johannes., and Wong, Vivian. OP.CIT. 109.
77 Reif, Linda C. OP.CIT. 240.
78 Ibid 233.

role would grant the Ombudsman a voice in shaping issues in the legislative and policy-making process, allowing it to inject crucial human rights perspectives into policy planning and evaluation. From inception to assessment, this active participation in the policy cycle aims to ensure that the human rights perspective influences the whole policy cycle, from agenda-setting to public policy evaluation.[79]. Such engagement can prove instrumental in combating systemic and structural discrimination through measures such as abolishing discriminative laws and protecting vulnerable and minority groups in legislation and policy. Drawing upon the example of the Ombudsman of Peru, it is evident that the Ombudsman institution collaborates with both legislative and executive bodies to formulate public policies guided by a human rights approach, as well as failing human rights violations to the Constitutional Tribunal. [80] The Ombudsman of Peru also strategically employs media channels to influence government bodies, concurrently fostering partnerships with civil society organizations and vulnerable populations, such as indigenous people.[81] Consequently, the Ombudsman of Peru actively participates in the various stages of policy-making and evaluation.

Finally, to apply the human rights approach effectively, The Indonesian Ombudsman should accord priority to vulnerable groups, notably women, persons with disabilities, children, and other minority groups. This prioritization is imperative due to their heightened vulnerability to discrimination in public services. Drawing insights from other countries, it is evident that the Ombudsman also emphasizes the attention to these demographic groups. For instance, the Ombudsman of Peru has established a dedicated Deputy Ombudsman Office for children and adolescents.[82] Similarly, in Spain, Ombudsman investigations are given precedence in cases involving challenges related to employment discrimination.[83]

5. Conclusion and recommendation

Indonesian Ombudsman falls under the classical model primarily because its establishment was driven by the objective of promoting good governance and addressing corruption, without emphasis on the incorporation of specific mandates about human rights principles within the Ombudsman Act. Consequently, the

79 Barco, Carlos Alza. OP.CIT. 198.
80 Pegram, Thomas. "Weak institutions, rights claims and pathways to compliance: the transformative role of the Peruvian Human Rights Ombudsman." *Oxford Development Studies*, 39 (2), (2011). 238 – 239.
81 Ibid 240 – 242.
82 Barco, Carlos Alza. OP.CIT. 195.
83 Ibid 195.

Indonesian Ombudsman operates primarily from a good governance perspective and adopts a case-by-case approach. A good governance perspective and case-by-case approach are insufficient for addressing structural discrimination cases in public services against vulnerable and minority groups, including persons with disabilities, minority religions, and women. Therefore, the Indonesian Ombudsman is required to embrace a human rights approach to address systemic discrimination cases through four key strategies: shifting the emphasis from rectifying maladministration to safeguarding human rights, transitioning from a case-centric perspective to a policy reform approach, and evolving from administrative oversight to the involvement of a policy-making and evaluation process, alongside paying attention to the vulnerable and minority demography.

This paper will recommend two things: firstly, the human rights approach should be integrated into the Ombudsman Act and all Ombudsman's supervisory standards. Secondly, the Ombudsman should employ proactive logic more frequently in addressing systemic discrimination cases, such as initiating proactive investigation and being involved in policy-making to eliminate discriminative legislation.

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