

**OMBUDSMAN OF THE REPUBLIC OF INDONESIA SUPERVISION
OF NOTARY SUPERVISORY COUNCIL**

Meilisa Fitri Harahap*

Roni Efendi†

***Abstract:** Notary Supervisory Council (MPN), which is suspected of having maladministration in the form of lengthy delays in the rapporteur's certainty about his report to the notary, so that the rapporteur reports to the Ombudsman. The Ombudsman, as a government agency for civil servants, has the power to monitor service providers, including those provided by the Notary Board (MPN). The urgency of this research is to review the legality of the Ombudsman in overseeing the MPI. This research is normative and empirical legal research that uses qualitative analysis. This research shows that the MPN is authorized to supervise and supervise notaries in the provision of public services in the form of administrative services and services, so that the MPN is under the Ombudsman's supervision. The Ombudsman's completion of reports of alleged maladministration by the MPN relies on public reports and then follows them up according to the Ombudsman's authority. The Ombudsman examined and followed up the report so that the MPP immediately forwarded the decision to the notary with a written warning.*

Key words: *Supervision, Ombudsman, the Brethren of the notary*

Introduction

Reforms mandate changes in the life of the state, nation, and society. This means that life is based on the state administration and democratic governance in order to improve welfare, create justice and legal certainty for all citizens as referred to in the 1945 State Constitution of the Republic of Indonesia. Before the reform of the administration of the state and government is filled with maladministration practices include corruption, collusion, and nepotism so that it is absolutely necessary to reform the state and government administration to create an effective and efficient, honest, clean, transparent and free from corruption, collusion and nepotism. (Explanation of Law of the Republic of Indonesia No. 37 of 2008 on Ombudsman of the Republic of Indonesia).

Bureaucratic reform is one of the government's efforts to achieve good governance and make fundamental reforms and changes to governance's system, especially institutional (organization), management and human resources aspects. The position of the Notary included into this aspect. Notary as a public official, is one of the state organs that is given legal authority to provide public services to the public, especially in making authentic deeds as perfect evidence regarding legal actions in the civil field (Yadura, 2006).

Position of Notary is regulated in Law of the Republic of Indonesia No 30 of 2004 on Notary Position as amended by Law of the Republic of Indonesia No 2 of 2014 on Amendment Law of the Republic of Indonesia No 30 of 2004 on Amendment to Law of the Republic of Indonesia Number 30 of 2004 on Notary Position (then referred to as UUJN). Article 1 of the UUJN

*Kepala Keasistenan Pemeriksaan Laporan Ombudsman RI Perwakilan Provinsi Sumatera Barat, email: meilisafitri1989@gmail.com

†Fakultas Syariah IAIN Batusangkar, email: roniefendi@iainbatusangkar.ac.id

states that a Notary is authorized to make an authentic deed as long as the making of certain authentic deed is not specific to other public officials. The making of an authentic deed by a Notary, not only because it is required by laws and regulations, but also because it is desired by the related parties to ensure the rights and obligations of the parties for certainty, order and legal protection for related parties as well as for society as a whole.

As a public official, a notary needs supervision to avoid mistakes or maladministration practices in carrying out the profession. Due to the responsibility of the Notary to the public, it must be guaranteed by an ongoing supervision and coaching by other parties. This is so that the duties and authority of the Notary are always in accordance with the rule of law and can avoid the abuse of authority or trust given by the government and the society.

Internally, supervision of Notary is carried out by the Notary Supervisory Council (MPN). Article 1 paragraph (6) of the UUJN states that MPN is a organization that has the authority to conduct guidance and supervision of Notaries. MPN consists of Notary of Central Supervisory Board, Notary of Regional Supervisory Board and Notary of Regional Supervisory Council.

MPN is formed and appointed by the Ministry of Justice and Human Rights whose funding for the implementation of tasks is charged to the budget of the Ministry of Law and Human Rights, which is sourced from the State Revenue Expenditure Budget (APBN) and runs administrative services. (Regulation of Menkumham, Number; M.HH-06.AH.02.10, 2009) one of the authorities of MPN is to receive reports from the public regarding alleged violations of the Notary Ethics Code or violations of the provisions in the Law. In addition, MPN is not only authorized to conduct supervision and inspection of Notaries, but also has the authority to impose certain sanctions on Notaries who have been proven to have violated the law regarding the Notary Office regulations (Adjie, 2005)

MPN as the only agency authorized to supervise, inspect and impose sanctions on Notaries in carrying out their duties, authorities and obligations properly has been regulated in several laws and regulations including UUJN, Minister of Law and Human Rights Regulation of the Republic of Indonesia Number M.02.PR08.10 of 2004 on Procedures for Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures and Procedures for the Inspection of Notary Supervisory Board, Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.39-PW.07.10 of 2004 on Guidelines for Implementing Duties of the Notary Supervisory Board, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.01-HT.03.01 of 2006 on Terms and Procedures for Appointment, Transfer and Dismissal of Notaries and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.03.HT.03.10 of 2007 on Taking of Minutes of Deed and Notary Call and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-06.AH.02.10 of 2009 on the Secretariat of the Notary Supervisory Council.

The supervisory functions carried out by MPN include: (Renvoi Magazine, 2008)

1. The authority of the Notary of Regional Supervisory Board relating to the inspection of the drawing up of the Minutes of Deed;
2. Conduct an inspection of the summon of the Notary in the court process;
3. Conduct an inspection of public reports regarding alleged violations of the Code of Ethics by a Notary or regulations regarding the Notary Position;
4. Check the Notary protocol.

In its duties and authorities, MPN has elements which are the field of supervision of the Ombudsman of the Republic of Indonesia. This is in accordance with the functions and duties of the Ombudsman of the Republic of Indonesia who are authorized to supervise the implementation of the tasks of the MPN that suspected of carrying out alleged maladministration in following up complaints or reports from the public against a Notary who is suspected of making a mistake or violation in carrying out his duties in accordance with applicable laws and regulations. This is possible because MPN is also vulnerable to maladministration in public service Article 1 paragraph(1) of Law the Republic of Indonesia Number 37 of 2008 on Ombudsman of the Republic of Indonesia (then referred to as the Ombudsman) is the state institution that has the authority to supervise the implementation of public service both held by the administrators of state and government including those organized by the State-Owned Enterprises, Regional-Owned Enterprises and State Owned Legal Entity and private entities or individuals were given the task to organize certain public services partly or entirely funded by the budget of revenues and expenditures and / or budgetary revenue and expenditure.

The word Ombudsman comes from Scandinavia which is interpreted as a person's legitimate representative (Masduki, 2005; 52) The term Ombudsman was first introduced in the Swedish Constitution in 1718 as the Ombudsman which means "representative", i.e. to appoint an official or an independent organization in charged of accommodating citizen complaints of irregularities or poor work done by officials or government agency. (Drafting Team of the Ombudsman RI on Public Service Complaints Management Module, 2012; 21) The word Ombudsman can be interpreted as representative, agent, delegate, lawyer, guardian or any other person who is authorized by others to act on their behalf and serve their interests (Catur Wido Haruni, 2015). However, the word Ombudsman is derived from the German language, which means a person who is given authority by a group of people to collect money by carrying out social activities of that community group (Huda, 2011).

The Ombudsman as an independent supervisory institution is free from interference from other powers as stated in Article 2 of the Ombudsman Law. Talking about the independence of the Ombudsman, Martin Oesting divided the Ombudsman's independence into institutional, functional and personal independence. (Drafting Team Book for Ombudsman RI, 2009; 42-43) Institutional independence means that the Ombudsman is not part of any public institution and has a high position in the government system. Functional independence means that the Ombudsman cannot be intervened or controlled by the influence of any ruler so that the Ombudsman must be given broad authority accompanied by a flexible (not rigid) procedure.

Whereas personal independence means that the Ombudsman's human resources must come from rigorous and accountable selection so that they can work well and are not tempted by the effects of Corruption, Collusion and Nepotism (KKN). All of that became an idealistic ideal in the formation of the Ombudsman Institution.

As the mandate of Article 7 of Ombudsman Law, the Ombudsman has the task:

- a. Receive reports of alleged maladministration in the implementation of public services;
- b. Conduct checks on the substance of the report;
- c. Following up on a report that is included in the scope of authority of the Ombudsman;
- d. Conduct an investigation on its own initiative into alleged maladministration in the implementation of public services;
- e. Coordination and cooperation with state institutions, government agencies, and community organizations and individuals;
- f. Building networks;
- g. Maladministrasi prevention efforts in the implementation of public services; and
- h. Perform other duties assigned by law.

Furthermore, under Article 8 paragraph (1) of Ombudsman Law, the Ombudsman has the authority:

- a. Request information orally and / or in writing from the complainant, reported, or a related party of the report submitted to the Ombudsman;
- b. Checking decisions, correspondence, or other documents that exist in the reporting or reported for the truth of a report;
- c. Asked for clarification and / or a copy or photocopy of documents required for checking reports from the agency reported;
- d. Summoning the complainant, reported, and other parties related to the report;
- e. Completing a report through mediation and conciliation at the request of the parties;
- f. Make recommendation to the completion of the report, including the recommendation to pay compensation and / or rehabilitation of the injured party;
- g. In the public interest to announce the findings, conclusions, and recommendations.

In addition to these powers, the Ombudsman also authorized:

- a. Giving advice to the President, Regional Head, or the leadership of the other State Officials to correct and to improve the organization and / or public service procedures;
- b. Giving advice to Parliament and / or the President, Parliament and / or the Head of the Region amend to laws and other legislation the amendment in order to prevent maladministration.

Related to the Ombudsman's task in the article above, especially point a, is to protect the rights of the society from maladministration done by public service administrator in this case can occur at MPN as a public service administrator in accordance with their duties and authorities to supervise and supervise Notar. Based on Article 1 paragraph (3) of the Ombudsman

Law explains that maladministration is a Behavior or act against the law, exceeds the authority, uses authority for other purposes of the authority, including negligence or neglect of legal obligations in the provision of public services Undertaken by the state and government administrator, including individuals who assist the government in providing public services that cause material and / or immaterial damages to the community and to individuals.

The most common forms of maladministration include protracted delays, misuse of authority, procedure deviation, abandonment of legal obligations, non-transparency, negligence, discrimination, unprofessional, unclear information, arbitrary actions, legal uncertainty, miss management. (Nurtjahjo et al, 2013).

MPN as a notary supervisor is also one of the public service administrators. Public Service is defined as any form of service, either in public goods or public services, which in principle is the responsibility and is carried out by government agencies at the central, regional, and state-owned or regional-owned business entities to meet the needs of the community and in the implementation of the provisions of the legislation. (Ratminto and Winarsih, 2005)

Law Republic of Indonesia Number 25 of 2009 Article 1 paragraph (1) concerning Public Services, explains that public services are activities or series of activities to meet service needs in accordance with statutory regulations for every citizen and population for goods and services, and / or administrative services provided by public service providers.

The scope of public services in Article 5 paragraph (1) of the Law on Public Services covers the service of public goods and public services as well as administrative services that are regulated in legislation. Public service administrators are every state institution, corporation, independent institution established under the law for public service activities, and other legal entities formed for public service activities as contained in Article 1 paragraph (2) of the Public Service Law. Based on this understanding, both MPN and Notary have public service functions, but MPN is included in the supervision of the Ombudsman because the funding uses the APBN / APBD while the Notary only receives an honorarium.

Based on data from the Ombudsman of the Republic of Indonesia on public reports that in 2013 there were 3 (three) reports related to MPN but there were no reports related to Notaries. One of the reports was related to the alleged maladministration of protracted delays carried out by MPN in following up on reports from people who were disadvantaged over the deed making by the Notary in Karawang, West Java Province. This report is registered in the Ombudsman reporting system of the Republic of Indonesia. The number of suspected cases of maladministration related to MPN is quite small (Ombudsman of the Republic of Indonesian Report, 2013).

Allegations of maladministration by the MPN have been reported to the Ombudsman of the Republic of Indonesia from a rapporteur living in South Jakarta against one of the Notaries in Karawang to the MPN who committed violations in carrying out their duties. The problem reported is that the Notary in Karawang has allegedly violated Article 16 paragraph (1) point d of the UUJN, in which the Notary has made a deed not before 2 (two) witnesses and was not signed before the witness and was not shown and was not accompanied by complete proof of rights. The notary should have refused

to make the deed because the witness and the registrants were not confronted together, but in reality the notary still made the deed. For the notary mistake, residents submit a report to the Karawang Regional Notary Supervisory Board and the West Java Regional Supervisory Council. Furthermore, the Notary of Regional Supervisory Board of West Java has inspected the report by issuing a decision stating that the Notary has violated Article 16 paragraph 1 point d UUJN and imposed sanctions to the Notary of Central Supervisory Board that is a temporary dismissal for 3 (three) months in Notary position. Furthermore, the Notary of Central Supervisory Board examines the report and reads the verdict which in one of its decrees states "Requesting the Notary Regional Examination Board of Karawang Regency to re-examine". The rapporteur objected to the verdict and felt there was a bias of the Central Supervisory Council to the reported Notary (Ombudsman of the Republic of Indonesia Report, 2013).

Then, the Karawang Notary Regional Supervisory Council (MPD) again conducted an inspection and decided "there has been a violation of Article 16 paragraph (1) of the reported Notary, in which 3 (three) registrants and 2 (two) witnesses were absent and signed, in addition, it was also not on the date stated in the deed and the Notary had violated the Notary's obligation in Article 16 paragraph (1) point b UUJN in which the Notary did not keep the deed as part of the Notary protocol". Karawang Notary Regional Supervisory Council (MPD) has submitted the results of the inspection to the Notary Regional Supervisory Board of West Java, but because there is no clarity regarding the final results of the problem and there has been no execution of errors made by the notary reported so the rapporteur reports the alleged maladministration to the Ombudsman of the Republic of Indonesia in Jakarta (Ombudsman of the Republic of Indonesia Report, 2013).

The existence of community efforts to encourage the implementation of supervision of the MPN in resolving Notary cases that seemed protracted and did not provide certainty caused the MPN to be reported by the public through a report addressed to the Ombudsman of the Republic of Indonesia. This condition is anxious for the writer because there is no specific regulation that provides legal certainty regarding the authority of the Ombudsman of the Republic of Indonesia to supervise the implementation of the MPN's duties. This makes the writer to conduct further research related to the position and legal certainty of the Ombudsman of the Republic of Indonesia in carrying out supervision on the MPN.

Discussion

1. Community Report Inspection Process

Ombudsman of the Republic of Indonesia in accepting public complaints for public services often accepts different terminologies which are complaint terminology and report terminology. The Ombudsman Law uses the terminology of the report defined as complaints or conveying facts that have been resolved by the Ombudsman. Complaints or conveying the facts are submitted in writing or orally by every person who is a victim of maladministration. Meanwhile, referring to Law Republic of Indonesia Number 25 of 2009, the terminology used is complaints but does not define in detail. Even though there are differences, basically the two terms contain the

same meaning, which is to contain complaints from the public regarding the implementation of public services.

Everyone has the right to submit complaints about public services that are considered harmful. Complaints can be submitted directly to service agencies or can also be submitted to the Ombudsman of the Republic of Indonesia. Article 1 paragraf (5) in Ombudsman Law states that the rapporteur is an Indonesian citizen or resident who submits a report to the Ombudsman of the Republic of Indonesia. Meanwhile, the reported party is the administrator of the state and government which is suspected of carrying out maladministration as in Article 1 paragraf (6) of the Ombudsman of Republic of Indonesia Law.

Maladministration can occur in every scope of public services, namely in public administration services, public goods services and public services. The three scopes cover various service sectors such as education, teaching, employment and business, housing, communication and information, environment, health, social security, energy, banking, transportation, natural resources, tourism, and other strategic sectors. These three scopes of public services shows the broad portion of the state to meet the needs of society resulting in the large scope of objects under the supervision of the Ombudsman of the Republic of Indonesia. One of the objects of supervision of the Ombudsman of the Republic of Indonesia is public services conducted by MPN.

The substance of maladministration reported related to MPN consists of various administrative aspects in the service, including the delay in following up on community reports or the absence of sanctions imposed on violating Notaries.

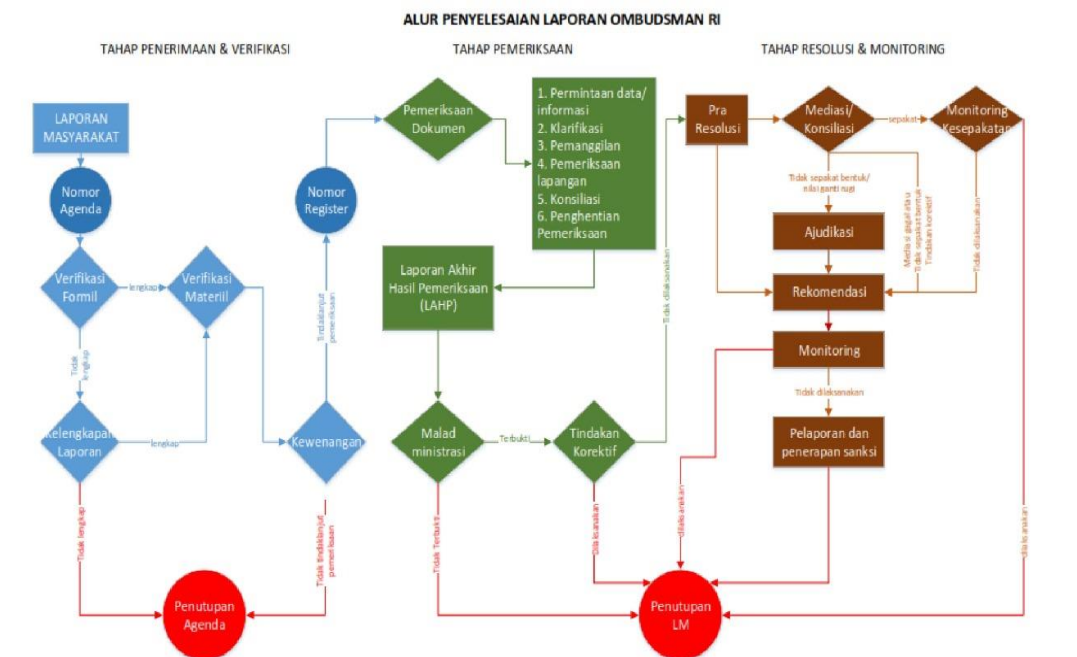
MPN, as it is known, is an organization that has the authority to conduct supervision, inspection and also impose sanctions on Notaries who have been proven to have violated their duties in carrying out the position of Notary. However, MPN cannot be arbitrary in carrying out its duties because the Ombudsman of the Republic of Indonesia as an external institution and in accordance with its function has the authority to supervise MPN that conduct alleged maladministration in providing services to the public.

Completion of public service reports by the Ombudsman of the Republic of Indonesia is different from the completion of reports by other institutions such as internal supervisory of government institution. The difference that is clearly seen is the mechanism for resolving reports specifically regulated in the Law. Furthermore, the Law mandates the Ombudsman of the Republic of Indonesia to further regulate the procedures for inspecting and completing reports as stated in Article 41 of the Ombudsman Law. This is what underlies the Ombudsman of the Republic of Indonesia to issue the Ombudsman Regulation of the Republic of Indonesia Number 26 of 2017 on the Procedure of Receipt, Inspection and Completion of Reports, which were previously regulated through the Ombudsman Regulation of the Republic of Indonesia Number 002 of 2009 concerning Procedures for Inspection and Completion of Reports and has been declared not valid since July 24, 2017.

Handling of reports by the Ombudsman of the Republic of Indonesia must always be guided by the principle of independence, non-discrimination, impartiality and not charging fees as written in Article 29 of the Ombudsman Law. According to the writer, the Ombudsman of the Republic of Indonesia

also needs to prioritize the precautionary principle so that it does not exceed authority. Consistency in the principle is in line with the philosophy of the existence of the Ombudsman as an impartial party, the place where the community submits complaints so that it makes an institution that is trusted by the community and the apparatus. This existence is a challenge for the Ombudsman of the Republic of Indonesia in carrying out its duties and responsibilities.

The flow of the report completion by the Ombudsman of the Republic of Indonesia based on the Ombudsman Regulation of the Republic of Indonesia Number 26 of 2017 is as follows:



KETERANGAN:

- Laporan dapat dinyatakan selesai oleh Ombudsman pada masing-masing tahapan berdasarkan hasil pemeriksaan maupun informasi dari Pelapor.
- Ombudsman dapat menghentikan pemeriksaan apabila laporan bukan merupakan kewenangan Ombudsman dan/atau tidak ditemukan unsur maladministrasi pada proses seleksi maupun proses pemeriksaan.

The flow of report completion illustrates the stages of the mechanism for handling community reports that are implemented within the Ombudsman of the Republic of Indonesia. Reports on maladministration carried out by the MPN will be handled by the Ombudsman of the Republic of Indonesia refer to the existing report completion flow because there is no specific mechanism for this.

The principle of its report completion in each stage of the inspection by the Ombudsman of the Republic of Indonesia prioritizes the protection of the rights of the community especially on the rapporteur so that the completion of the report is more oriented to fulfill the expectations of the rapporteur. In general, the steps involved in inspection reports / complaints are:

a. Inspection Report

Public reports that can be followed up by the Ombudsman of the Republic of Indonesia are reports that meet the requirements of Article 24 of the Ombudsman Law. In general three requirements must be fulfilled: first, formal administrative requirements. Second, the requirements regarding the substance related to the competence of the Ombudsman of

the Republic of Indonesia. Third, the reports submitted do not exceed the expiration time. (Suryati Hartono, et al, 2003; 14).

Public reports can come from the public directly or at the initiative of the Ombudsman of the Republic of Indonesia, reports submitted through direct access, letters, telephone, email, fax and social media will be registered into the Sistem Informasi Manajemen Penyelesaian Laporan (SIMPeL) application. After registration, the next step will be followed up by the Assistant who is appointed to handle the report for inspection in accordance with applicable regulations.

In the initial stage of the inspection of the report conducted by the Ombudsman of the Republic of Indonesia is the completeness of the report requirements consisting of formal and material requirements. Formal requirements according to Article 4 of the Ombudsman Regulation of the Republic of Indonesia Number 26 of 2017 on the Procedure of Receipt, Inspection and Completion of Reports, consist of:

- 1) full name, place and date of birth, marital status, occupation, full address of the rapporteur and complete with a photocopy of identity;
- 2) power of attorney in the case of report submission is authorized to another party;
- 3) contains a description of events, actions, or decisions that are reported clearly and in detail;
- 4) has submitted a report directly (written or oral) to the reported agency or its supervisor, but the report did not get the completion as it should;
- 5) the reported event, action or decision has not passed 2 (two) years since the relevant event, action or decision occurred;

The thing that must be ensured by the Ombudsman of the Republic of Indonesia at the time of formal inspection is regarding the completeness of the report. If the report submitted is incomplete, the Ombudsman of the Republic of Indonesia will send written notification to the rapporteur and within 30 days to complete the data. Furthermore, if the rapporteur does not complete within the time limit, the report is declared incomplete and cannot be followed up and subsequently the report can be declared closed as stated in Article 25 of the Ombudsman Law.

On the other hand, if the report fulfills the formal requirements, the report is continued with the registration and substantive inspection stages concerning the material requirements of the report.

Material requirements according to Article 5 of the Ombudsman Regulation of the Republic of Indonesia Number 26 of 2017 on the Procedure of Receipt, Inspection and Completion of Reports are as follows:

- 1) The substance of the report is not currently or has been the object of an inspection of the Court, unless the report concerns maladministration in the process of inspection in court;
- 2) The report is not in the process of being resolved by the reported institution and according to the Ombudsman, the process of completion is still within a reasonable grace period;
- 3) The rapporteur has never obtained a completion from the reported Institution;
- 4) The substance reported is in accordance with the scope of authority of the Ombudsman; and

- 5) Substance reported is being and / or has been followed up by the Ombudsman.

Reports related to alleged maladministration by MPN need to be traced first to the latest efforts made by MPN in following up on public reports related to alleged violations committed by the notary who were complained. The traceability is to answer the question whether allegations of maladministration exist in reported cases . Then the other thing that also needs to be ensured by the Ombudsman of the Republic of Indonesia is regarding the efforts of the rapporteur in submitting complaints in writing or orally to the reported party or his supervisor but did not get the follow up as this should be in accordance with Article 24 paragraph (1) point c of the Ombudsman Law;

If public report has been submitted to the Regional Supervisory Council is not processed or processed but there is an undue delay or an alleged violation of the procedure, and after being complained to the reported agency or its supervisor does not receive the proper action, the report to the MPN can be followed up after the formal and material requirements of the report are fulfilled, because there is an initial allegation of maladministration which is an authority possessed by the Ombudsman of the Republic of Indonesia.

Certainty both formal and material reports are useful for determining the follow-up steps of the Ombudsman of the Republic of Indonesia in following up on public reports. If the substance of the report does not become the authority of the Ombudsman of the Republic of Indonesia, the follow-up action is to submit a written notification in the form of an unauthorized notification letter to the rapporteur and in the notification may contain suggestions to the rapporteur to submit the report to other authorized agencies, as referred to in Article 27 of the Ombudsman Law.

When the report becomes the authority of the Ombudsman, the Ombudsman of the Republic of Indonesia will then follow up by requesting an written explanation from the reported agency or conducting investigations and other actions mandated by the Law, in order to obtain balanced information and explanations and obtain supporting documents to draw final conclusions for the report.

Before asking for an explanation, it is necessary to identify the party responsible for the problem reported. If the problem is due to service in MPD, then the reported agency is MPD, whereas if the alleged maladministration occurs due to MPW or MPP, then the reported agency is MPW or MPP itself, and the Ombudsman can also request information from other parties related to the report , in accordance with the authority of the Ombudsman of the Republic of Indonesia.

In line with the existence of the Ombudsman of the Republic of Indonesia since 2000, the type of maladministration in public services identified by the Ombudsman of the Republic of Indonesia has also changed. Initially there were many types of maladministration, then along with the dynamics of reports or complaints received by the Ombudsman of the Republic of Indonesia, it was classified into several types of maladministration as stated in Article 11 of the Ombudsman Regulation Number 26 of 2017, as follows:

- 1) Prolonged postponement
- 2) Not providing services

- 3) Incompetent
- 4) Abuse of authority
- 5) Procedural deviations
- 6) Reward request
- 7) Inappropriate
- 8) To take sides
- 9) Discrimination
- 10) Conflict interest

Each report received will be classified according to the type of maladministration. This is to make it easier to find out the maladministration that must be followed up by the Ombudsman, as well as the report on the MPN. The substance of the report must also be classified in the maladministration in accordance with the report submitted by the rapporteur. The alleged maladministration is determined by the Ombudsman, not the public, because sometimes the rapporteur does not know correctly the maladministration that has occurred, they tends to convey the problem of the service received from the complained agency.

b. Clarification Request to the Reported Agency

The Ombudsman of the Republic of Indonesia in carrying out its duties and authorities must hold the principles of propriety, justice, non-discrimination, impartiality, accountability, balance, openness and confidentiality as referred to in Article 3 of the Ombudsman Law. One of these principles is reflected in the process of completing community reports by giving the reported agency opportunity to express opinions. This opportunity is known as clarification request of the Ombudsman of the Republic of Indonesia.

The request for clarification of the Ombudsman of the Republic of Indonesia is divided into two that are clarification in the field (direct clarification) and clarification through official letters (indirect clarification). (Suryati Hartono, et al, 2003; 24-25). This is in line with Article 28 of the Ombudsman Law stating that the Ombudsman of the Republic of Indonesia in conducting inspection can a) call in writing the Reported agency, witnesses, experts, and / or translators for questioning; b) request a written explanation from the Reported agency; and / or c) conducting a field inspection. These three processes are united according to the flow of report / complaint completion implemented by the Ombudsman of the Republic of Indonesia.

The Ombudsman Law gives a grace period of 14 (fourteen) days for the reported agency to submit an opinion or rebuttal to the Ombudsman of the Republic of Indonesia. If within the grace period, the reported agency does not provide an explanation, according to the mandate of Article 33 paragraph (2), the Ombudsman of the Republic of Indonesia for the second time requests a written explanation from the reported agency. However, if the reported agency still does not provide an explanation on the second chance, the Ombudsman may state that the reported agency is not using his right to answer.

However, in its implementation, the Ombudsman continues to seek clarification of the reported agency by requesting information directly from both the reported and the reported supervisor. In addition, the Ombudsman

also conducts field investigations or calls on reported agency to provide an explanation.

c. Investigation

Investigation is the next stage of the report inspection process. The term investigation is used to distinguish an examination or investigation carried out by other investigating officers. (Suryati Hartono, et al, 2003: 30) The Ombudsman of the Republic of Indonesia in conducting an investigation does not always have to be at the location of the object of the dispute relating to the report. However, investigations can be carried out at the Reported agency's office. The Ombudsman Law uses the term field inspection to refer to this investigation.

Through the investigation of various data, documents, and information collected from various parties both the Reported agency and other related parties, it is even possible to confirm the rapporteur's response during the investigation. The results of this investigation will be the basis for the Ombudsman to draw conclusions or final opinions on public reports. There are several qualifications or requirements before a report can be continued by conducting a field inspection as stated in Article 19 of the Ombudsman Regulation of the Republic of Indonesia Number 26 of 2017 on the Procedure of Receipt, Inspection and Completion of Reports, that are:

- 1) Problems reported require visual proof,
- 2) Ensure the substance of the problem, and
- 3) Obtain an explanation from the related parties.

Investigation of the Ombudsman of the Republic of Indonesia is not only limited to reported public service issues, but can also conduct an investigation of its own initiative (own motion investigation) as stated in Article 7 point d of Law Republic of Indonesia Number 37 of 2008. This is a pro-active form of Ombudsman Republic of Indonesia to supervise public services in accordance with the mandate of Article 34 of the Ombudsman Law.

The supervision of the Ombudsman of the Republic of Indonesia on allegations of maladministration that occur in the community can run without any reports or complaints from the public. The Ombudsman of the Republic of Indonesia can follow up on alleged irregularities in the administration of public services that have an impact on society, without waiting for reports from the public. Because it is in line with the duties and authority of the Ombudsman.

In general, the investigation of initiatives itself is carried out on systemic problems. However, for certain cases that are not systemic it is also very possible. The results of investigative initiatives on systemic cases will be subject to evaluation of public service systems that contain systemic reviews. (Suryati Hartono, et al, 2003: 35)

d. Mediation and Conciliation

Mediation or conciliation between the parties (the rapporteur and the Reported agency) are other efforts taken and become the authority of the Ombudsman of the Republic of Indonesia in completing public service reports. Mediation is one of the characteristics of the Ombudsman in the world, including in Indonesia. Completion of the report through mediation is based on the willingness of the parties to meet and find solutions together, so that the completion effort that needs to be done is an effort that provides a solution to the problem of the rapporteur and becomes a means of conflict

resolution. This is in line with the choice of dispute resolution in the form of mediation because the nature of mediation is deliberation between the parties and a win-win solution.

Mediation is the process of resolving public service disputes between parties through assistance, both by the Ombudsman itself and through mediators formed by the Ombudsman. Meanwhile, conciliation is the process of resolving public reports carried out by the Ombudsman conciliator related to the delivery of public services with the aim of finding a solution that can be accepted by both parties through the proposed framework for completion by the Ombudsman conciliator. (Ombudsman Regulation Number 26 of 2017).

In mediating the Ombudsman of the Republic of Indonesia must ensure that the completion efforts through mediation are an agreement both of the parties. The needs of the parties in accordance with Article 46 paragraph (5) of Law Republic of Indonesia Number 25 of 2009 on Public Services which states that the Ombudsman is required to mediate and conciliate in resolving complaints at the request of the parties.

Convincing the Reported agency to resolve the issue through mediation by the Ombudsman of the Republic of Indonesia is an uneasy responsibility for the Ombudsman of the Republic of Indonesia, especially if from the beginning the Reported agency has been resistant to the report, the process of convincing the parties undertaken by the Ombudsman is known as the pre-mediation process.

If the parties agree to complete mediation, the Ombudsman of the Republic of Indonesia will appoint a mediator to act as an intermediary. The role of the mediator is crucial in the mediation process. Therefore, in mediation of Ombudsman of the Republic of Indonesia, a mediator needs to give an explanation to the parties first. This explanation included the mediation of the Ombudsman of the Republic of Indonesia, the role and neutrality of the Mediator, and the case description. The mediator's role is to explore alternative solutions in accordance with the mediator's position as an intermediary and neutral. Mediation will result in agreement if both parties are able to be wise in dialogue. In mediation, the Ombudsman's role as mediator becomes significant in regulating the negotiation process. The agreement of the two parties based on the results of mediation will become material for the Ombudsman of the Republic of Indonesia to close the report and declare the report has been completed.

e. Final Report of Investigation (LAHP)

The entire examination results are compiled in the Final Report of Investigation (LAHP) as stated in Article 25 of the Ombudsman Regulation Number 26 of 2017. There are 3 (three) conclusions from the LAHP: there was no maladministration, there was found maladministration, but it was resolved during the inspection process, or there was found maladministration contains corrective actions. If maladministration contain corrective action suggestions, but within 30 days the reported agency does not respond, then it will then be submitted to the Resolution and Monitoring Unit to take the next completion step, and if not, then the final effort is to issue an Ombudsman Recommendation product. LAHP is the final product issued by the Representative Office and Head Office and the right to issue Recommendations is Ombudsman of the Republic of Indonesia. The implementation of this LAHP has been issued since the Ombudsman

Regulation Number 26 of 2017, so that the previous report still uses the Ombudsman Regulation Number 002 of 2009 on Procedures for Inspection and Completion of Reports.

f. Recommendation

Recommendations are conclusions, opinions, and suggestions based on the results of investigation of Ombudsman of the Republic of Indonesia, to the Reported agency's supervisor to be followed up in order to improve the quality of good government administration. (Article 1 paragraph(7) of Ombudsman Law). Recommendations as the end product of the Ombudsman of the Republic of Indonesia were issued when the report inspection process was carried out to the maximum.

If the results of the inspection of the Ombudsman of the Republic of Indonesia can prove that maladministration has occurred by the reported agency, the resolution efforts through mediation or consiliation have not reached an agreement, the Ombudsman of the Republic of Indonesia may decide to issue recommendations. This recommendation contains: a). a description of the report submitted; b). a description of the results of the inspection; c). the form of maladministration that has taken place; and d). the conclusion and opinion of the Ombudsman of the Republic of Indonesia regarding matters that need to be carried out by the Reported and the supervisor reported.

The contents of the recommendations of the Ombudsman of the Republic of Indonesia according to Article 8 paragraph (1) point f of the Ombudsman Law consist of recommendations regarding the completion of the report. Recommendations for paying compensation and / or rehabilitation to the injured party. The recommendation of the Ombudsman of the Republic of Indonesia is addressed to the reported and supervisor reported. The Reported and supervisor reported who received the recommendation of the Ombudsman of the Republic of Indonesia must implement the recommendation as stated in Article 38 of Ombudsman Law.

2. Case Position

Based on data from the Ombudsman of the Republic of Indonesia on community reports in 2013, there were reports of alleged maladministration by MPN on someone who felt disadvantaged in making a deed made by a Notary in Karawang, West Java Province. This report is registered in the reporting application system in Indonesia. The procedures for completing the report in 2013 still use the Ombudsman Regulation of the Republic of Indonesia Number 002 of 2009 on Procedures for Inspection and Completion of Report.

Maladministration by MPN that have been reported to the Ombudsman of the Republic of Indonesia come from a rapporteur living in South Jakarta, reporting one Notary in Karawang who violated his duties, the reported problems are:

- a. The rapporteur reported a Notary in Karawang to the Notary Regional Supervisory Assembly (MPD) of the Kerawang Regency through a letter dated February 28, 2011 for alleged violations of the UUJN and the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number M.02.PR.08.10 of 2004 relating to the deed sale and purchase agreement and transfer of rental rights number 1 dated November 28, 2005 made by a notary in Karawang.

- b. The rapporteur stated that a Notary in Karawang had allegedly violated Article 16 paragraph (1) point d of the UUJN, in which the Notary had made the Deed not before 2 (two) witnesses and was not signed before the witness and was not shown and was not accompanied by complete proof of rights.
- c. Deed of sale and purchase agreement made by a notary in Karawang on November 28, 2005 the object is a house building on a land leased from Pradja Djakarta City registered under the name SS located on Jl. Sidoro Number 9 A, RT. 004 / RW. 001, Kelurahan Guntur, Setiabudi District, South Jakarta at the request of the heirs of Alm. Mr. SS (first party) and Mr. MAL (second party).
- d. The rapporteur and her husband are residents of the house based on the deed of transferring rights No.19 May 31, 2000 and housing permit (SIP) from Alm.Mr.TAH. At this time, between the rapporteur and Mr. MAL disputes in a civil suit that is currently under review (PK) in the Supreme Court.
- e. According to the rapporteur, the Notary in Karawang should have refused to make a Deed, because there were no witnesses and registrants confronted together, but the Notary still made it. For these errors, the rapporteur submitted a report to the Karawang Regional Notary Supervisory Board and the West Java Regional Supervisory Council.
- f. MPW Notary of West Java has inspected and decided on January 17, 2012 then the verdict was read on January 20, 2012 which stated that the Reported had violated Article 16 paragraph(1) point d of Law Number 30 of 2004 on the Position of Notary; and impose sanctions on the Notary of Central Supervisory Board of temporary dismissal for 3 (three) months in the Notary Position.
- g. Notary of Central Supervisory Board inspected the report, terminated in a meeting on May 30, 2012, which was read on June 8, 2012, in one of its proposals stating "Requesting the Notary Regional Inspectorate Council of Karawang Regency to re-examine". Rapporteur objected to the decision and felt there was a partiality of the MPP to the Notary DS, SH.
- h. Then the Notary of Regional Supervisory Council (MPD) of Karawang re-examine on January 16, 2013, including deciding:
 - There has been a violation of Article 16 paragraph (1) of the Notary Position Law by Notary DS, SH in which 3 (three) registrants and 2 (two) witnesses were absent and signed, at the same time also not on the date stated in the deed;
 - There has been a violation by a Notary in Karawang over the Notary obligations stated in Article 16 paragraph (1) b of the Notary Position Law that does not keep a deed as part of the Notary protocol.
 - Karawang Notary of Regional Supervisory Council (MPD) submitted the results of the inspection to the West Java Notary of Regional Supervisory Council by letter on February 14, 2013, but until the rapporteur reported to the Ombudsman of the Republic of Indonesia there was no clarity about the final results of the problem and there was no execution of mistakes made by the notary in Karawang.

After verification the formal and material requirements so that the first follow-up done by the Ombudsman of the Republic of Indonesia is a request for written clarification to the reported agency to get an initial explanation of

the report and determine the next steps for the response given by the reported.

The reporting mechanism in the Ombudsman of the Republic of Indonesia is in accordance with the report completion flow, first the report from the rapporteuris submitted by letter dated August 20, 2013, then the report is registered and received a registration number according to the reporting system in the Ombudsman. Furthermore, the report reception team looked at the completeness of the formal requirements (Article 24 of the Law of Republic of Indonesia Number 37 of 2008) in the form of completeness of identification and documents related to the report. After the formal requirements have been fulfilled, Ombudsman conducts a substantive examination to determine or not the authority is to follow up on the report. Then, the assistant appointed to examine the report takes the first step by submitting a letter of clarification request to the Notary of MPP, dated October 30, 2013, which contains a request for an explanation related to legal considerations underlying the taking different decisions in the same problem, knowing the efforts that have been carried out in the second decision and the efforts that are being made in resolving the reporting problem. Requests for written clarification must be responded by the MPP within 14 (fourteen) days in accordance with Article 33 of Law of Republic of Indonesia Number 37 of 2008 and the Ombudsman of the Republic of Indonesia also requested an directly explanation with Notary of MPP.

Based on the clarification provided and related documents, MPW Notary held a hearing and sanction in front of the Investigating Panel on public complaints against the Reported Notary in Karawang, on 23 November 2011, 07 December 2011, and 21 December 2011 as outlined in the decision No. 03/ PTS/MPWN. Prov.Jabar/I 2012 on 17 January 2012, and Decision reading on 20 January 2012, with the following verdict:

- a. Grant the rapporteur's report in part;
- b. Stating the Reported had violated Article 16 paragraf 1 point d of the UUJN;
- c. Imposing sanctions to Notary of MPP for 3 (three) months against the Reported in his position as a Notary.

Conclusion

Notary Supervisory Councils (MPN) at all levels perform public services because of their duties and functions to supervise the work of Notaries. Whereas in Article 70 point g UUJN and Article 13 paragraph (2) point d of the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number M.02.PR.08.10 of 2004 regulates that MPN is also tasked with receiving and following up on public reports, this provision explicitly provides that MPN organizes public services, that are administrative services and services because supervision carried out by MPN especially those from public reports is a form of service provided to the public because MPN works using the state budget, while the substance of supervision conducted by MPN is administrative services due to carrying out ranging from supervision to decision-making of a notary that is proven to violate his duties or provisions in the UUJN where the decision is submitted in the form of an MPN decision which is administrative and binding on the Notary.

The procedure of inspection in Ombudsman of the Republic of Indonesia in completing reports of alleged maladministration by the Notary Supervisory Board is carried out through public reports to the Ombudsman of the Republic of Indonesia related to alleged maladministration by the Notary Supervisory Board. The completion procedure includes registering reports, checking formal and material reports, if declared authorized, the Ombudsman conducts a substance inspection in form of requests for clarification, investigation, summons and mediation and the final effort is a Recommendation. In the case of the report to the Notary in Karawang, there was an allegation of the absence of sanctions by the MPP against a Notary in Karawang, which after being inspected by Ombudsman, then from the documents provided that the MPP handed down MPP's decision Number: 07/B/Mj.PPN/V/2013 by punishing the Notary with written warning sanctions, the MPP's decision is in accordance with Article 35 paragraph (1) and Article 35 paragraph (2) of the Minister of Law and Human Rights Regulation Number M.02.PR.08.10 of 2004.

References

- Antonius Sujata, & RM Surachman, 2011, *Catatan Perjalanan Sebelas Tahun Ombudsman Republik Indonesia*, Cetakan Pertama, Idcc, Jakarta.
- Catur Wido Haruni, 2015, *Menata Proses Seleksi Ombudsman*, Makalah pada Konferensi Nasional Hukum Tata Negara ke-2. Padang, 11-12 September oleh Pusat Studi Konstitusi (PUSaKO) Fakultas Hukum Universitas Andalas.
- Habib Adjie, 2005, *Undang-Undang Jabatan Notaris (UUJN) sebagai Unifikasi Hukum Pengaturan Notaris*, Renvoi, No. 28.
- Hendra Nurtjahjo, dkk, 2013, *Memahami Maladministrasi*, Ombudsman Republik Indonesia, Cetakan Pertama, Jakarta.
- Majalah Renvoi, 2008, Nomor: 8.56 V, Berita Daerah mengenai Kewenangan Majelis Pengawas Cerminkan Kelembagaan Profesi Notaris.
- N.G. Yudara, 2006, *Notaris dan Permasalahannya (Pokok-Pokok Pemikiran Di Seputar Kedudukan Dan Fungsi Notaris Serta Akta Notaris Menurut Sistem Hukum Indonesia)*, Makalah disampaikan dalam rangka Kongres INI di Jakarta, Majalah Renvoi Nomor 10.34.III, Jakarta.
- Ni'matul Huda, 2007, *Lembaga Negara dalam Masa Transisi Demokrasi*, Cetakan Pertama, UII Press, Yogyakarta.
- Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor: M.HH-06.AH.02.10 Tahun 2009 Tentang Sekretariat Majelis Pengawas Notaris.
- Peraturan Ombudsman Republik Indonesia Nomor: 002 Tahun 2009 tentang Tata Cara Pemeriksaan dan Penyelesaian Laporan)
- Ratminto dan Atik Septi Winarsih, 2005, *Manajemen Pelayanan*, Pustaka Pelajar, Yogyakarta.
- Sunaryati Hartono, dkk, 2003, *Panduan Investigasi Untuk Ombudsman Republik Indonesia Indonesia*, Komisi Ombudsman Nasional, Jakarta.
- Teten Masduki, 2005, *Good Governance dan Ombudsman*, Peranan Ombudsman dalam Pemberantasan dan Pencegahan Korupsi serta

- Pelaksanaan Pemerintahan yang Baik*, Komisi Ombudsman Indonesia, Jakarta.
- Tim Penyusun Modul Pengelolaan Pengaduan Pelayanan Publik Ombudsman Republik Indonesia, 2012, *Modul Pengelolaan Pengaduan Pelayanan Publik*, Ombudsman RI, Jakarta.
- Tim Penyusun Buku Ombudsman Republik Indonesia, 2009, *Ombudsprudence*, Ombudsman RI, Jakarta.
- Undang-Undang Nomor 37 Tahun 2008 tentang Ombudsman Republik Indonesia, "*Lembaran Negara Republik Indonesia* Tahun 2008 Nomor 139 dan *Tambahan Lembaran Negara Republik Indonesia* Nomor 4899, Penjelasan umum atas Undang-Undang Ombudsman Republik Indonesia.