



Ombudsman's role in supervising maladministration: A study based on law No. 37 of 2008 and *siyāsah dustūriyyah*

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ABSTRACT

Background: The Ombudsman plays a critical role in overseeing public service delivery and government administration, particularly in addressing maladministration. In 2022, the Ombudsman investigated alleged maladministration in the appointment of acting regional heads, following reports from KontraS, ICW, and Perludem, which highlighted a lack of public participation, transparency, and procedural deviations. This study examines the Ombudsman's role and authority in addressing maladministration based on Law No. 37 of 2008, viewed through the lens of *siyāsah dustūriyyah* (Islamic constitutional politics). **Methods:** This research employs a normative juridical approach, utilizing library research to analyze legal regulations, books, and other relevant sources. The study adopts a statutory approach (*statute approach*) and a conceptual approach (*conceptual approach*) to explore the Ombudsman's role and authority. **Findings:** The Ombudsman's actions in addressing maladministration include conducting independent investigations, issuing recommendations, and publishing findings in the Final Examination Report/*Laporan Akhir Hasil Pemeriksaan* (LAHP). These actions align with its authority under Articles 7 and 8(1) of Law No. 37 of 2008. From the perspective of *siyāsah dustūriyyah*, the Ombudsman's role parallels that of *hisbah*, an Islamic supervisory institution tasked with upholding justice and preventing wrongdoing. **Conclusion:** The Ombudsman ensures transparency, accountability, and adherence to legal procedures in government administration. Its authority, as outlined in Law No. 37 of 2008, aligns with the principles of *siyāsah dustūriyyah*, emphasizing the importance of supervisory institutions in promoting good governance. **Novelty/Originality of this article:** This study uniquely integrates the legal framework of the Ombudsman with the principles of *siyāsah dustūriyyah*, offering a comprehensive analysis of the Ombudsman's role in addressing maladministration from both legal and Islamic governance perspectives.

KEYWORDS: law no. 37 of 2008; maladministration; Ombudsman; *siyāsah dustūriyyah*.

1. Introduction

The increasing demands from society, often marked by widespread demonstrations and public complaints, have compelled the state to enhance governmental performance in line with public expectations. In the current era of reform, the government faces numerous fundamental challenges, particularly in improving the quality of public administration, which has often fallen short of societal needs and expectations. Despite the adoption of good governance principles as a strategic effort by the government, the implementation of effective governance remains inconsistent. Various malpractices in public administration persist, including high levels of Corruption, Collusion, and Nepotism/*Korupsi Kolusi dan*

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Nepotisme (KKN), rampant illegal levies and bribery, abuse of authority, and a lack of government transparency. These issues fall under the category of maladministration, which must be addressed promptly as they contradict the general principles of good governance, such as legal certainty, orderly state administration, openness, proportionality, professionalism, and accountability (Ilmar, 2014; Tjandra, 2018).

Public services and law enforcement are integral to state administration and are essential for creating a clean, efficient, and effective government (Kulal et al., 2024; Rosenbloom et al., 2022). These efforts aim to enhance public welfare and establish justice and legal certainty for all Indonesian citizens, as mandated by the 1945 Constitution of the Republic of Indonesia. To achieve these goals, the Indonesian government established the Ombudsman of the Republic of Indonesia (Ombudsman RI) on March 10, 2000. This institution emerged as a form of self-criticism in response to dissatisfaction with the performance of conventional state institutions (Rishan, 2020). The Ombudsman RI is an independent state body authorized to oversee public service delivery by state and government agencies, including the judiciary, prosecution, police, National Land Agency, regional governments, and state-owned enterprises, among others. Its establishment was formalized through Presidential Decree No. 44 of 2000 under President Abdurrahman Wahid, who sought to create an institution capable of monitoring government performance and public services in the judiciary, based on Pancasila principles, with independence and the authority to investigate public complaints regarding state administration (Yuswalina & Budianto, 2016).

The Ombudsman RI is characterized by its independence and its mandate to address maladministration, including arbitrary actions, abuse of authority, violations of regulations, and unnecessary delays (Marbun, 2013). Its legal framework was further strengthened through Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, which explicitly outlines its authority and oversight functions. Article 6 of this law stipulates that the Ombudsman is responsible for supervising public services provided by state and government institutions at both central and regional levels (Taroreh et al., 2022). The primary objective of the Ombudsman is to create a conducive environment for combating corruption, collusion, and nepotism, while protecting public rights in accessing justice, welfare, and public services. To achieve this, the Ombudsman is tasked with addressing reports of misconduct by state officials in their duties or public service delivery (Rizki 2018).

In practice, the Ombudsman has conducted oversight on various issues, including the 2022 appointment process of regional heads, following reports from civil society organizations (CSOs) such as Commission for Missing Persons and Victims of Violence/*Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan* (KontraS), Indonesia Corruption Watch (ICW), and Association for Elections and Democracy/*Perkumpulan untuk Pemilu dan Demokrasi* (Perludem). These organizations alleged maladministration in the appointment process, citing a lack of public participation, transparency, and procedural deviations (Ombudsman RI, 2022). The Ombudsman identified three instances of maladministration: (1) inadequate responses to information requests and public complaints, (2) irregularities in the appointment process of regional heads, including the appointment of active military officers, and (3) non-compliance with Constitutional Court decisions as a basis for regulatory reform (Perludem, 2022). Following its investigation, the Ombudsman issued recommendations to the Minister of Home Affairs, urging corrective actions. However, more than 30 days after the recommendations were issued, no significant follow-up or corrective measures were taken by the Ministry. According to Article 38 of Law No. 37 of 2008, the Ombudsman has the authority to publicly disclose non-compliance with its recommendations and report such cases to the President and the House of Representatives/*Dewan Perwakilan Rakyat* (DPR).

The concept of oversight in governance is not new and has historical roots in Islamic political thought. During the caliphate of Umar bin Khattab, institutions like *Wilayat al-Hisbah* were established to oversee public welfare and address grievances (Djazuli, 2003). This institution, rooted in the Islamic principle of *al-Amr bi al-Ma'ruf wa al-Nahy an al-*

Munkar (enjoining good and forbidding evil), shares similarities with the modern Ombudsman in its role of monitoring government officials and ensuring compliance with ethical and legal standards. The correlation between *Wilayat al-Hisbah* and the Ombudsman RI is evident in their shared objectives of preventing misconduct and promoting good governance.

Given the importance of oversight in ensuring effective governance, this study aims to analyze the role and authority of the Ombudsman in addressing maladministration in the appointment of regional heads, based on Law No. 37 of 2008, from the perspective of *siyāsah dustūriyah* (constitutional politics in Islamic jurisprudence). The research seeks to explore the Ombudsman's function as a supervisory body, as outlined in Article 6 of Law No. 37 of 2008, which mandates the oversight of public services provided by state and government institutions. The study also highlights the Ombudsman's authority to issue binding recommendations and impose sanctions for non-compliance, underscoring its critical role in promoting accountability and transparency in public administration.

2. Methods

2.1 Research methodology

Research methodology refers to the approach used to address a specific issue or to advance scientific knowledge through systematic methods (Efendi & Ibrahim, 2016). It encompasses various strategies and techniques designed to ensure the reliability and validity of the study. This section outlines the type and nature of the research, the research approach, data sources, data collection methods, and data analysis techniques employed in the study.

2.2 Type and nature of research

The research conducted in this study adopts a library research methodology, which primarily relies on literature as the primary source of data collection (Zed, 2014). This method emphasizes textual analysis and critical review of existing literature, positioning scholarly resources as the primary data foundation. The research paradigm adopted is qualitative, characterized by descriptive data in the form of written or verbal expressions from observed behaviors and documented sources. This qualitative approach enables an in-depth understanding of the issues being studied through interpretative analysis.

2.3 Research approach

This study employs both a statutory approach and a conceptual approach. The statutory approach is used as a legal foundation, as outlined in Law No. 37 of 2008, which defines the functions, duties, and authority of the Ombudsman in overseeing maladministration, particularly in the appointment of regional heads in Indonesia. This approach ensures that legal frameworks are accurately interpreted and applied. Additionally, the conceptual approach is utilized by referencing fundamental legal principles (Marzuki, 2005). To identify these principles, the researcher first examines relevant legal doctrines and theories. Through this approach, the study scrutinizes the consistency of Articles 6 to 9 of Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, which incorporate these doctrines.

This research approach focuses on analyzing the application of legal norms and principles. The fundamental premise of this approach views law as a structured set of codified regulations established and enacted by authorized institutions or officials. By employing this method, the study examines the role and authority of the Ombudsman in overseeing maladministration in the appointment of regional heads, as stipulated in Law No. 37 of 2008, from the perspective of Islamic constitutional law (*Siyasah Dusturiyah*).

2.4 Data sources

The data sources in this study are categorized into two types: primary and secondary sources. Primary data sources include legal materials directly obtained from authoritative sources, such as Law No. 37 of 2008 and Presidential Decree No. 40 of 2000 (Amiruddin & Asikin, 2006). Additionally, in the context of Islamic law, primary sources include verses from the Quran, Hadith, and classical jurisprudence books (*Fiqh Siyasah*), which provide a comparative perspective on governance and oversight.

Secondary data sources encompass official documents, books, research reports, and other scholarly works (Amiruddin & Asikin, 2006). These secondary materials support and strengthen the primary data by providing context and critical analysis. The secondary data utilized in this study include books, research journals, articles, internet sources, final reports on maladministration investigations in the appointment of regional heads, and other relevant references concerning the role and authority of the Ombudsman in legal oversight.

2.5 Data collection method

Data collection in this study follows a systematic process to ensure the accuracy and reliability of findings. The researcher employs a document review method, commonly referred to as documentation analysis. This technique involves gathering data by examining and recording information from pre-existing documents relevant to the research topic.

The documentation process involves reviewing legal texts, official reports, books, and scholarly articles related to the role and authority of the Ombudsman in overseeing maladministration in the appointment of regional heads. Additionally, this method includes an assessment of final investigative reports on suspected maladministration cases, which serve as secondary data. The collected data is then critically evaluated to ensure validity and reliability. By following this approach, the research aims to provide well-founded and accountable findings.

2.6 Data analysis method

The data analysis in this study employs content analysis, a technique used to systematically collect and interpret textual data. Content analysis involves evaluating collected data to derive meaningful conclusions based on legal reasoning and scholarly considerations. This study applies a qualitative analysis approach to both primary and secondary data, including legal documents, books, and written works. The findings are then synthesized to draw conclusions grounded in legal principles and the theoretical framework established in the study. This method ensures that the analysis is both comprehensive and academically rigorous.

2.7 Systematic structure of discussion

To facilitate a structured and comprehensive understanding, this research is organized into four chapters. Chapter I provides an introduction, discussing the background of the research problem, operational definitions, research questions, objectives, and significance of the study. Additionally, it outlines the study's systematic structure. Chapter II discusses the research methodology, covering the type and nature of research, research approach, data sources, data collection methods, and data analysis techniques employed in the study. Chapter III presents an analysis of the role of the Indonesian Ombudsman in overseeing maladministration in the appointment of regional heads, based on Law No. 37 of 2008, and from the perspective of Islamic constitutional law. This chapter includes an analysis of the Ombudsman's role under statutory provisions and an evaluation of its function from the *Siyasah Dusturiyah* perspective. Chapter IV serves as the concluding chapter, summarizing

the key findings and presenting recommendations for future research and policy development. This section is followed by a bibliography and relevant appendices.

2.8 Operational definitions

To avoid misunderstandings in interpreting the terms used in this research, the author provides the following operational definitions, the Ombudsman of the Republic of Indonesia, hereafter referred to as the Ombudsman, is an independent state institution authorized to oversee the delivery of public services by state and government agencies, including State-Owned Enterprises/*Badan Usaha Milik Negara* (BUMN), Region-Owned Enterprises/*Badan Usaha Milik Daerah* (BUMD), and State Legal Entities, as well as private entities or individuals tasked with providing specific public services funded partially or entirely by the state or regional budget (Indonesian Government, 2008). In this study, the Ombudsman refers specifically to the Ombudsman RI, which received reports and complaints and was authorized to address allegations of maladministration in the appointment of regional heads in May 2022.

Maladministration refers to actions or behaviors that violate the law or involve the abuse of authority in the delivery of public services by state and government officials, resulting in material or immaterial losses for individuals or the public (Indonesian Government, 2008). In this study, maladministration specifically pertains to irregularities in the appointment process of regional heads, including three identified instances; delays in responding to information requests and complaints, procedural deviations in the appointment of regional heads, and neglect of legal obligations based on Constitutional Court decisions.

A Regional Head is an official appointed by the President for Governors or by the Minister of Home Affairs for Regents and Mayors to carry out the duties, authorities, and responsibilities of a regional head for a specified period (Ministry of Home Affairs, 2013). In this study, the term refers to several Acting Governors, Regents, and Mayors whose appointments on May 12, 2022, were not in accordance with established procedures.

Siyāsah dustūriyah is a branch of *fiqh siyāsah* (Islamic political jurisprudence) that focuses on the regulation of state legislation, particularly the relationship between the government, state institutions, and the people (Albajuri, 2019). In this research, the role of the Ombudsman is analyzed through the lens of *siyāsah dustūriyah*, where the oversight institution is referred to as *ḥisbah*. This institution is obligated to uphold justice and prevent wrongdoing, aligning with the principles of *al-Amr bi al-Ma'ruf wa al-Nahy an al-Munkar* (enjoining good and forbidding evil). The concept of *ḥisbah* in Islamic governance shares similarities with the Ombudsman's role in ensuring accountability and transparency in public administration.

By defining these terms operationally, the study aims to provide clarity and ensure a consistent understanding of key concepts throughout the research. This approach also helps to establish a strong foundation for analyzing the Ombudsman's role in addressing maladministration in the appointment of regional heads, as well as its alignment with the principles of *siyāsah dustūriyah*.

3. Results and Discussion

3.1 The role and authority of the Ombudsman as a supervisory institution based on Law No. 37 of 2008

3.1.1 Definition of obudsman

The term "Ombudsman" was first introduced in Sweden in 1718, meaning a representative, agent, delegate, legal advisor, or someone authorized to act on behalf of others to advocate for their interests. Linguistically, the word "Ombudsman" originates from German, referring to a person authorized by a community to collect funds for communal

activities. According to Article 1, Paragraph 1 of Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, the Ombudsman is defined as a state institution authorized to oversee the delivery of public services by state and government agencies, including State-Owned Enterprises, Region-Owned Enterprises, and State Legal Entities, as well as private entities or individuals tasked with providing specific public services funded partially or entirely by the state or regional budget (Indonesian Government, 2008).

The concept of the Ombudsman first emerged in Sweden, although Sweden was not the first country to establish a supervisory system akin to the Ombudsman (Sörensen & Olsson, 2020). Finland adopted the Ombudsman system in 1919, followed by Norway in 1952, where its initial role was limited to overseeing the military. Denmark established its Ombudsman institution in 1953. The idea of the Ombudsman quickly spread from Scandinavia to other regions, including Europe, Asia, Africa, and America. In 1967, the United Kingdom established an Ombudsman institution in response to public dissatisfaction with administrative inefficiency and ineffectiveness (Izzati, 2020).

Historically, during the Roman Empire, an institution called *Tribuni Plebis* existed, tasked with protecting the rights of the weak from abuses of power by the nobility. Similarly, during the Chinese Empire, particularly in the Qin Dynasty around 221 BC, a supervisory institution named *Control Yuan* or *Censorate* was established to oversee imperial officials and serve as a channel for public grievances.

In Indonesia, the idea of establishing an Ombudsman institution has long been discussed. Scholars such as Satjipto Rahardjo, Muchsan, P.K. Ojong, T.H. Lim, Junaidi Suwantojo, and Markus Lukman emphasized the importance of an Ombudsman as a public control mechanism over the government. They argued that such an institution would ensure efficient administration in line with established regulations and serve as a preventive measure against maladministration.

The establishment of the Ombudsman in Indonesia gained momentum during the presidency of B.J. Habibie and was further advanced by his successor, K.H. Abdurrahman Wahid. On November 17, 1999, President Wahid initiated discussions on forming an independent supervisory body, which led to the issuance of Presidential Decree No. 55 of 1999 concerning the Study Team for the Establishment of the Ombudsman in Indonesia. This decree highlighted the need for an institution to protect public rights from deviations by state officials. On March 10, 2000, Presidential Decree No. 44 of 2000 formally established the National Ombudsman Commission, marking the official birth of the Ombudsman in Indonesia (Desiana, 2013).

3.1.2 Legal basis of the Ombudsman in Indonesia

The Ombudsman, initially named the National Ombudsman Commission, was established based on Presidential Decree No. 44 of 2000. This decree emphasized the importance of empowering public oversight to ensure honest, transparent, and corruption-free governance. However, the decree's provisions were relatively general, limiting the Ombudsman's authority and scope (Sujata, 2002; Indonesian Government, 2000).

In 2008, under President Susilo Bambang Yudhoyono, Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia was enacted. This law provided a clearer and more detailed framework for the Ombudsman's role, authority, and functions. Additionally, Law No. 25 of 2009 concerning Public Services further strengthened the Ombudsman's mandate in overseeing public service delivery and government administration.

3.1.3 Purpose of establishing the Ombudsman

The primary purpose of establishing the National Ombudsman Commission was to prevent abuses of power and assist authorities in performing their duties effectively and efficiently. According to Article 4 of Law No. 37 of 2008, the Ombudsman aims to, (a) realize a democratic, just, and prosperous state based on the rule of law; (b) encourage effective, efficient, honest, transparent, and corruption-free governance; (c) improve the quality of

public services to ensure justice, security, and welfare for all citizens; (d) combat and prevent maladministration, discrimination, collusion, corruption, and nepotism; and (e) enhance national legal culture, public legal awareness, and the supremacy of law (Indonesian Government, 2008).

3.1.4 Functions and duties of the Ombudsman

The Ombudsman's primary function is to protect public rights from maladministration in public service delivery (Hasjimzoem, 2014). According to Articles 6 and 7 of Law No. 37 of 2008, the Ombudsman is tasked with: (a) receiving reports of alleged maladministration in public service delivery; (b) conducting substantive examinations of reports; (c) following up on reports within its jurisdiction; (d) initiating investigations into alleged maladministration; (e) coordinating with other state institutions, government agencies, and civil society organizations; (f) building networks; (g) preventing maladministration in public service delivery; and (h) performing other duties assigned by law (Indonesian Government, 2008).

3.1.5 Role and Authority of the Ombudsman

The Ombudsman plays a crucial role in improving the quality of public administration and promoting good governance principles. It ensures transparency in state administration and provides opportunities for public participation in improving public services. According to Article 8 of Law No. 37 of 2008, the Ombudsman has the authority to: (a) request oral or written information from complainants, respondents, or related parties; (b) examine decisions, documents, or other records to verify reports; (c) request clarifications or copies of documents from relevant institutions; (d) summon complainants, respondents, and related parties; (e) resolve reports through mediation and conciliation; (f) issue recommendations, including compensation or rehabilitation for affected parties; and (g) publish findings, conclusions, and recommendations in the public interest. Additionally, the Ombudsman can provide suggestions to the President, regional heads, or other state officials to improve organizational structures and public service procedures. It can also recommend legislative changes to prevent maladministration (Izzati, 2020).

3.1.6 Definition of maladministration

Maladministration refers to actions or behaviors that violate the law or ethical standards in public service delivery, including abuse of authority, negligence, disregard for legal obligations, prolonged delays, discriminatory actions, and requests for undue benefits (Indonesian Government, 2009). According to Article 1, Paragraph 3 of Law No. 37 of 2008, maladministration includes decisions or events that contravene the law, exceed authority, or use authority for purposes other than its intended objectives, resulting in material or immaterial losses for individuals or the public (Indonesian Government, 2008).

3.1.7 Elements of maladministration

The elements of maladministration include: (a) unlawful actions; (b) exceeding authority; (c) using authority for unintended purposes; (d) negligence or disregard for legal obligations; (e) actions by state or government officials; (f) causing material or immaterial losses; and (g) affecting individuals or the public.

3.1.8 Forms of maladministration

According to Ombudsman Regulation No. 26 of 2017, as amended by Regulation No. 48 of 2020, maladministration can take various forms, including: (a) prolonged delays; (b) failure to provide services; (c) incompetence; (d) abuse of authority; (e) procedural

deviations; (f) requests for undue benefits; (g) improper behavior; (h) bias; (i) discrimination; and (j) conflicts of interest (Indonesian Government, 2017).

3.1.9 Good governance

Good governance refers to the effective, transparent, and accountable management of public affairs. It involves the principles of participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness, efficiency, and accountability (Sukardja, 2012). The principles of good governance, as outlined by the United Nations Development Program (UNDP), include: (a) participation; (b) rule of law; (c) transparency; (d) responsiveness; (e) consensus orientation; (f) equity; (g) effectiveness and efficiency; and (h) accountability. These principles serve as benchmarks for evaluating the quality of governance and ensuring that public institutions operate in the best interest of society. By adhering to these principles, the Ombudsman plays a vital role in promoting good governance and ensuring that public services are delivered efficiently, transparently, and accountably (Warjiyati, 2018).

3.2 Supervisory and public complaint institutions in the islamic constitutional system according to *siyasah dusturiyah*

3.2.1 Definition of *siyasah dusturiyah*

Linguistically, the term "*dusturi*" refers to a collection of rules governing fundamental matters and relationships among members of society within a state, whether written or unwritten (Jailani, 2013). In the context of Sharia, "*dusturiyah*" refers to fundamental principles aimed at governing a state, encompassing legislation, regulations, and customs that prevail within a particular nation (Aziz, 2009).

Thus, *Siyasah Dusturiyah* is a branch of *fiqh siyasah* that elaborates on matters related to state legislation. This discussion includes concepts surrounding the constitution (the fundamental laws of a state and the historical evolution of legislation), legislation (the procedures for drafting laws), and the democratic institution of *shura*, which constitutes a crucial pillar of state legislation and serves as the executor of such laws. Furthermore, this area also addresses the concept of the rule of law, the objectives and duties of the state, reciprocal relations between the government and its citizens, and the fundamental rights of citizens that must be protected (Iqbal, 2001).

In formulating a constitution, a fundamental principle that must be upheld is the guarantee of human rights for every member of society and the equal status of all individuals before the law. This principle prohibits discrimination based on social status, wealth, education, or religion. Consequently, the enactment of laws is intended to realize public welfare and fulfill the needs of humankind, aligning with one of the essential principles of *fiqh siyasah*. For this reason, *Siyasah Dusturiyah* is classified as part of *fiqh siyasah*, as it specifically addresses issues related to state legislation (Jailani, 2013).

3.2.2 Scope of *siyasah dusturiyah*

The scope of *Siyasah Dusturiyah* covers a wide range of aspects of life and is considerably complex. Generally, issues related to *Siyasah Dusturiyah* are categorized into two fundamental aspects. First, there are universal legal foundations, including Quranic verses, hadiths, *Maqashid Sharia*, and the spirit of Islamic teachings that regulate societal life in a manner that remains stable despite changing circumstances. Second, there are regulations subject to change due to shifts in situations and conditions, often shaped by the results of *ijtihad* by scholars.

Some of the key issues addressed in this field include the scope of discussion and related issues, matters concerning *imamah* (leadership) including rights and responsibilities, issues related to citizens, their status, and their rights, matters concerning *bai'ah* (allegiance),

issues regarding waliyul ahdi (successor appointment), matters related to representation, issues regarding ahlul halli wal aqdi (the council of decision-makers), and matters concerning wizarah (ministry) and its considerations.

From another perspective, fiqh *Siyasah Dusturiyah* can be divided into four categories. First, *Siyasah Tasyri'iyah* (Legislative Policy) governs matters of representation, relationships between Muslims and non-Muslims within a state, including fundamental laws such as the Constitution, laws, implementation regulations, regional regulations, and institutions like *ahl al-hall wa al-'aqd*. Second, *Siyasah Tanfidziyah* (Executive Policy) regulates leadership matters, including *bai'ah*, *wizarah*, and *waliy al-ahdi*. Third, *Siyasah Qadha'iyah* (Judicial Policy) addresses issues related to the judiciary and legal enforcement. Fourth, *Siyasah Idariyah* (Administrative Policy) regulates administrative affairs and state personnel (Djazuli, 2003).

A state has various duties to fulfill in order to achieve the overarching goal of ensuring public welfare. These responsibilities include the formulation of legislation in accordance with Sharia and Islamic teachings, the implementation of established laws, and the maintenance of legal integrity to ensure their continuous enforcement.

3.2.3 The importance of supervisory institutions in islam

Islam's primary objective is to establish social justice through enjoining good and forbidding evil (*amar ma'ruf nahi munkar*). Ibn Taymiyyah emphasized a similar notion, stating that Allah commands humankind to uphold justice, establish collective prayers, practice honesty, maintain trustworthiness, and combat oppression.⁵⁹ Such objectives cannot be realized without authority and governance (*imarah*) (Taimiyah, 1999).

The Quran emphasizes this obligation in *Surah Ali 'Imran* (3:104):

"And let there be among you a group of people who invite to goodness, enjoin what is right, and forbid what is wrong. They are the successful ones."

Additionally, *Surah Ali 'Imran* (3:110) states:

"You are the best nation produced [as an example] for mankind. You enjoin what is right, forbid what is wrong, and believe in Allah. If the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient."

These verses underscore the obligation to uphold *amar ma'ruf nahi munkar* within a state. If implemented through a government-established institution, such efforts will be more effective. In addition to upholding this principle, the enforcement of Islamic law aims to ensure public welfare. The successful implementation of Sharia requires dedicated institutions to oversee and enforce it. Without such institutions (*al-qadha*), legal principles cannot be properly applied.

Islamic governance also incorporates a system of checks and balances, though its practical implementation remains complex. Thus, a clear interpretation of this concept is necessary while adhering to its primary sources—the Quran, *Sunnah*, and scholarly *ijtihad* (Bustamin, 2018). To ensure optimal application of these principles, avoid conflicts between the government and society, and uphold good governance, Islam necessitates the establishment of specialized supervisory institutions.

3.2.4 Concept of supervisory and public complaint institutions in the islamic constitutional system according to siyasah dusturiyah

In Islam, the government institution responsible for implementing *amar ma'ruf nahi munkar* is referred to as *hisbah*. This institution is tasked with ensuring adherence to ethical and religious principles by promoting good when it is neglected and preventing wrongdoing

when it is evident. Historically, the hisbah system coexisted with regular judicial institutions and the *al-mazalim* institution. The hisbah system represents an original Islamic administrative structure that emerged within the caliphate, which fundamentally serves as a representative body for religious governance and state affairs (Az-Zuhaili, 2011).

The Wilayat al-Hisbah (supervisory and advisory body) is an institution that ensures public compliance with regulations, educates citizens on legal adherence, and addresses violations (Djalil, 2012). Hisbah also functions as an official state body with the authority to address minor offenses that do not require judicial intervention (Sunaryo, 2011). According to Ahmad Azhar Basyir, hisbah is a state supervisory institution that operates under the supervision of specially designated officers known as muhtasib. Their responsibilities include monitoring individual and collective activities, ethical and economic conduct, and other affairs to uphold justice and ensure adherence to Islamic principles and societal norms.

The official responsible for overseeing hisbah is called the *Wali Hisbah*, while the authority vested in this institution is referred to as *Wilayatul Hisbah*. Al-Mawardi defined hisbah as an institution tasked with monitoring compliance with established regulations. The *Wali Hisbah* and muhtasib are empowered to enforce *amar ma'ruf nahi munkar* but do not have the authority to impose legal punishments, as this jurisdiction belongs solely to the judiciary. Hisbah authority encompasses all violations related to public morality, economic integrity, social order, and religious observance. Additionally, muhtasib is responsible for ensuring that laws and ethical standards are upheld, occasionally issuing decisions in urgent matters requiring immediate resolution.

3.3 The role and authority of the Ombudsman in handling maladministration in the appointment of regional head officials based on law no. 37 of 2008 and siyasah dusturiyah

Considering the provisions stipulated in law no. 37 of 2008 concerning the Ombudsman of the republic of indonesia, the Ombudsman functions as a state institution endowed with the authority to oversee the administration of public services and government affairs. This oversight extends to services provided by state administrators, government institutions, state-owned enterprises, regionally-owned enterprises, state legal entities, private entities, and individuals who carry out public services or functions that are partially or fully funded by the state or regional budget (Indonesian Government, 2008).

The suspected maladministration in the appointment process of regional head officials in 2022 reflects a lack of transparency, participation, and openness toward the public by state or government administrators. In this case, the minister of home affairs, as the reported party, was found to have violated the general principles of good governance (aaupb). Therefore, immediate corrective measures are required to prevent further adverse consequences that could diminish the quality of government administration.

The role and actions undertaken by the Ombudsman in addressing this issue align with the functions outlined in law no. 37 of 2008. The measures taken by the Ombudsman in investigating the alleged maladministration are based on the legal framework provided by article 7 and article 8, paragraph (1) of law no. 37 of 2008 concerning the Ombudsman of the republic of indonesia. Additionally, the Ombudsman refers to article 18, letters (g) and (f) of law no. 25 of 2009 concerning public services, as well as article 25, paragraph (1) of Ombudsman regulation no. 26 of 2017 concerning procedures for receiving, examining, and resolving complaints, which states that the final results of an investigation are compiled in a final investigation report.

In executing its functions and responsibilities, the Ombudsman has the authority to request oral and/or written statements from complainants, reported parties, or other relevant stakeholders regarding the submitted complaint (Indonesian Government, 2008). Additionally, it may examine decisions, correspondence, or other documents held by either the complainant or the reported party to verify the validity of the complaint. For investigative purposes, the Ombudsman can also request clarification and obtain copies of necessary documents from any institution. Furthermore, it has the power to summon

complainants, reported parties, and other relevant stakeholders for examination. In resolving complaints, the Ombudsman may facilitate mediation and conciliation upon the request of the involved parties. It also holds the authority to issue recommendations regarding the resolution of complaints, including suggestions for compensation and/or rehabilitation for aggrieved parties. Lastly, in the public interest, the Ombudsman may publish its findings, conclusions, and recommendations to ensure transparency and accountability.

Following these procedures, the Ombudsman, in handling the suspected maladministration case, initially requested oral and written statements from the complainants, reported parties, and other involved entities. Once these statements were gathered, the next step was to examine relevant documents, including decisions and correspondence, to verify the validity of the complaint. If the findings confirmed that the case fell within the Ombudsman's jurisdiction, the report was accepted for further examination. Otherwise, the complaint was dismissed with the issuance of a Final Closure Report/*Berita Acara Pemeriksaan* (BAP).

If a complaint is accepted, the investigation continues until the case reaches a resolution. Further steps include summoning relevant parties for clarification. In the case of suspected maladministration in the appointment of regional head officials, the Ombudsman summoned and examined the director of regional head and dprd facilitation (representing the minister of home affairs as the reported party), as well as complainants such as kontras, icw, and perludem. Additionally, testimonies were collected from the head of career development bureau of ssdm polri, the head of legal development agency of the Indonesian national armed forces, and expert witnesses from various institutions. Consultations were also held with the registrar of the constitutional court for substantive discussions.

During the investigation, several administrative irregularities were identified. These included the lack of response to information requests and complaints, the improper nature of the appointment of regional head officials, and procedural issues that deviated from previous appointment mechanisms. Notably, this was the first time in Indonesian state governance history that a significant number of regional head positions were occupied by appointed officials for an extended period, requiring specialized regulatory and systematic preparations. Furthermore, there was a lack of public knowledge regarding the appointment process, which should have been transparently communicated to complainants. Another key issue was the appointment of active tni officers as regional head officials, whereas, in principle, active tni members are only permitted to hold positions in specific institutions outlined by law, and any appointment outside these areas must comply with legal provisions on military and civil service regulations.

Based on its findings, the Ombudsman concluded that the appointment process exhibited three elements of maladministration. These included maladministration in responding to information requests and complaints from complainants, maladministration in the appointment process of regional head officials, and maladministration in implementing Constitutional Court decisions as a basis for regulatory adjustments. Upon completing the investigation, the Ombudsman issued corrective actions and recommendations for the reported party (Imbaruddin et al., 2021). These recommendations included addressing the complaints and objections raised by the complainants, improving the appointment process of regional head officials, particularly concerning the appointment of active Indonesian National Army/*Tentara Nasional Indonesia* (TNI) officers, and preparing a draft proposal for the formulation of government regulations regarding the appointment, authority, performance evaluation, and termination of regional head officials. Following the completion of all necessary steps, the Ombudsman published its findings, conclusions, and recommendations in the final investigation report (lahp) on suspected maladministration in the appointment of regional head officials, registration number 0583/LM/VI/2022/JKT (Ombudsman RI, 2022).

From the perspective of *fiqh siyāṣah dustūriyyah* (constitutional political jurisprudence), the existence of a supervisory institution within a state is of paramount

importance. This necessity is based on divine commandments, as stated in the Qur'an, specifically in *Surah Ali-Imran* verse 104, which translates as follows.

"And let there be among you a group of people who call towards righteousness, enjoin what is good, and forbid what is evil; it is they who will attain success."

Moreover, Prophet Muhammad (peace be upon him) consistently instructed his followers to uphold the principle of *al-Amr bi al-Ma'ruf wa al-Nahy an al-Munkar* (commanding good and forbidding evil). He emphasized this principle in a hadith narrated by Imam Muslim, which states:

"Whoever among you sees wrongdoing, let him change it with his hand (authority); if he is unable, then with his words; and if he is still unable, then with his heart, and that is the weakest level of faith."

Ibn Taymiyyah, in his work on Islamic governance (*siyāsah shar'īyyah*), underscores the necessity of appointing rulers to implement the principle of enjoining good and forbidding evil. This appointment is intended to ensure the welfare of society. Consequently, a state leader is obliged to establish institutions specifically tasked with overseeing the implementation of this principle. Based on this reasoning, the enactment of Law No. 37 of 2008, which serves as the legal foundation for the establishment of the Ombudsman as a supervisory institution, aligns with the principles of *fiqh siyāsah dustūriyyah*. This alignment is evident in the shared objective of enforcing and upholding the principle of *al-Amr bi al-Ma'ruf wa al-Nahy an al-Munkar* for the benefit of the public.

In the context of Islamic governance, the Ombudsman has similarities with the concept of *wilāyat al-ḥisbah*, an institution responsible for implementing the principle of enjoining good and forbidding evil. Unlike judicial bodies, this institution does not require court proceedings since the matters it handles are not of a judicial nature. The primary role of *wilāyat al-ḥisbah* is to conduct oversight and ensure that both the general public and state officials adhere to ethical and legal standards. Similarly, the Ombudsman of the Republic of Indonesia functions as a supervisory body for public services and governmental administration. It is tasked with receiving complaints related to suspected maladministration, conducting substantive examinations of these reports, and following up on them by issuing recommendations in the Final Examination Report (*Laporan Akhir Pemeriksaan* or LAHP). The role of *wilāyat al-ḥisbah* also involves receiving reports or complaints from the public regarding violations of regulations, ethical conduct, or moral principles, with officials known as *muḥtasibs* fulfilling this function. Both institutions share similar mechanisms of operation and authority.

Additionally, the Ombudsman has the authority to independently initiate investigations into suspected maladministration without necessarily waiting for a formal complaint from the public. This proactive oversight role is essential in preventing bureaucratic inefficiencies and ensuring that government institutions operate in accordance with principles of fairness and transparency. Based on this analysis, the role and authority of the Ombudsman align with and do not contradict the principles of *siyāsah dustūriyyah*. In performing its supervisory functions, the Ombudsman adheres to the same fundamental principles as *wilāyat al-ḥisbah* in the Islamic governance system, reinforcing its legitimacy as a regulatory institution within the state framework.

4. Conclusions

The role and authority of the Ombudsman of the Republic of Indonesia in supervising and handling allegations of maladministration in the appointment process of regional head officials include receiving reports of suspected maladministration in the administration of public services and government affairs conducted by state or governmental administrators, particularly in the appointment process of regional head officials. The Ombudsman follows

up on reports that fall within its jurisdiction, conducts substantive examinations of the received complaints, and initiates investigations independently in cases of suspected maladministration. Furthermore, it issues recommendations regarding complaint resolution and publishes the findings, conclusions, and recommendations in the Final Examination Report (Final Report of Audit Results/*Laporan Akhir Hasil Pemeriksaan* or LAHP). These actions are in accordance with the provisions of Articles 7 and 8, paragraph (1) of Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.

Moreover, the role and authority of the Ombudsman in supervising and addressing allegations of maladministration in the appointment process of regional head officials, as stipulated in Law No. 37 of 2008, align with and do not contradict the principles established in the study of *fiqh siyāsah dustūriyyah*. The Ombudsman shares similarities with the concept of *wilāyat al-ḥisbah*, an oversight institution in the Islamic governance system tasked with implementing the principles of *al-Amr bi al-Ma'ruf wa al-Nahy an al-Munkar*, aiming to ensure public welfare. Additionally, the Ombudsman possesses similar authority to *wilāyat al-ḥisbah*, functioning as a preventive supervisory body. Both institutions are limited to examining allegations of maladministration and issuing recommendations to the reported party, without the authority to impose sanctions or adjudicate cases. In executing their functions and duties, neither the Ombudsman nor *wilāyat al-ḥisbah* require judicial proceedings, as the matters they handle do not fall within the realm of litigation.

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Author Contribution

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