

The Function of the Indonesian National Ombudsman Commission in Promoting Good Governance and Improving Services to the Public

Prof. Dr. C.F.G. Sunaryati Hartono, S.H *

*) Indonesian National Ombudsman Commissioner

Introduction:

The Indonesian National Ombudsman Commission (heretoforth abbreviated NOC) was established in the year 2000 by President Abdurrachman Wahid by Presidential Decree No. 44 of the year 2000 which determined that the commission shall :

1. "Step up the control over the governmental institutions, including the judiciary, by requesting them for clarifications (regarding complaints from the public), investigate and issue recommendations to the respective institutions;
2. Improve the protection of the citizens in order that they may obtain better service, justice, prosperity, and are able to defend their rights against maladministrative and corruptive practices, discrimination, undue delay and improper discretion committed by governmental officials;
3. To accommodate participation of the public in order that a conducive climate be achieved for an effective and clean bureaucracy and a professional judiciary in accordance with the principles of good governance."

Also noteworthy is that Mr. Marzuki Darusman before his appointment as attorney general was himself the Chairman of the National Human Rights Commission.

The establishment of the NOC therefore was completely the result of the determination of the Indonesian government to :

- improve the protection of human rights ;
- improve the interest and needs of the citizens ;
- establish democratic means and institutions for the citizens' complaints handling against the administration and its services, which shall be speedy, cheap and effective, not too formal, and able to combat corruptive practices in the bureaucracy ; by
 - a. improving the procedure by which public services are and should be provided by the bureaucracy as well as the judiciary ;
 - b. improving the performance of the bureaucracy and judiciary in general, in accordance with recognized principles of a modern democratic state under the rule of law
 - c. thereby improving good governance as a whole.

The Presidential Decree also said, that within 6 (six) months time the NOC shall have drafted a bill on the National Ombudsman Institution, so that the institution of the Ombudsman was not meant as a temporary institution, but that it will become one of the controlling or overseeing institutions of the state, in particular over the administration and services provided by the state to the public at large.

Starting the NOC

At the time of its establishment the role of the ombudsman was regarded as an institution in the interest of the citizen and directly related to the protection of human rights, which in previous decades were more often than not very much neglected.

On April 20th, 2006 the NOC entered its seventh year of existence, making it therefore one of the oldest democratic administrative oversight and complaints handling institutions in Indonesia¹ heralding the Reformation Era of the 21st century.

The institution of the ombudsman was hence evidence and at the same time condition toward a democratic state and good governance under the rule of law.

At the beginning the NOC consisted of 5 (five) commissioners, including the Chief Ombudsman, Mr. Antonius Sujata, who was kind enough to put his own office available for NOC's activities, since no budget, let alone office premises or salaries, were put aside for the NOC.

The establishment of the NOC was highly promoted and supported by the Indonesian Attorney General at the time, Mr. Marzuki Darusman, who advised the President to appoint Mr. Antonius Sujata, SH, who was also a member of the National Human Rights Commission, to plan the Ombudsman Commission and draft a Presidential Decree for it in order that the commission could be established as soon as possible.

Since at the time the nation was still in an "abnormal" state, after the ousting of President Soeharto, the commissioners, who were imbued with the spirit of human rights, anti corruption and democracy saw their appointment as their part of the struggle and sacrifice for the rule of law and democracy in Indonesia, and hence started immediately with whatever means were at hand.

¹ Note that the Human Rights Commission was already established in the Soeharto Era.

The first case brought to the attention of the NOC concerned a complaint against the Supreme Court, concerning 2 (two) contradictory judicial verdicts which concerned one and the same defendant, as well as one and the same case/indictment. The first verdict saying that the defendant was not guilty, whilst the other sentenced the defendant to 6 months imprisonment.

Even without looking into the decision themselves, this complaint clearly evidenced a gross deviation from the ordinary judicial procedure, amounting to a gross form of maladministration, and even indicating the possibility of bribe to and/or by the supreme court's registrar, who is usually responsible for the typing out of the judge's decision.

The NOC, therefore, sent a recommendation to the Supreme Court to investigate the matter, which recommendation was followed up by the Supreme Court

Soon it was found out, that the right decision was the one acquitting the defendant to be not guilty.

That year (2000) the NOC handled 1723 cases of which 35 % were complaints against the judiciary

Six years of NOCs experience

After a coordinative meeting was held with the vice chairman of the Supreme Court, Attorney General, the Head of the Police and the Inspector General of the Justice Department it was decided that each of these institutions would appoint a liaison officer to handle the requests for clarifications and recommendations of the NOC, whilst the Justice Department, would see to it that all Inspector General's offices of all governmental Departments would act as liaison officer for all communication with the NOC, as they indeed had the duty for oversight over their officials.

Although (apart from the Presidential Decision) no legal instrument whatsoever was in place, nevertheless through such meetings and parliamentary hearings, next to consultations with public officials and seminars for the public, including NGO's and students, surprisingly up to 50 % of NOC's recommendations are followed up by the respective public institutions

Lately, the NOC enjoys the trust of the Ministerial Office for the Improvement of the State Apparatus (Bureaucracy), as they have included the Ombudsman as the main non-judicial complaint handling institution against officials of the administration in three of their bills, e.g. the Bill on Ethical Behavior of Government Officials, the Bill on Governmental Administration and the Bill on Improvement of Public Services, which will form the legal basis of the drive towards Bureaucratic Reform and Good Governance in Indonesia.

The thrust of the three bills lies in a number of ethical principles to be upheld by every civil servant and governmental official embedded in the Bill on Ethical Behavior of Government Official, and 20 principles of good governance to be taken into account by every governmental decision maker, which principles at the same time will be and in fact are already used by the National Ombudsman Commission as criteria or yardsticks to determine, whether there is a case of maladministration, or not.

Furthermore, the Bills state, that whenever a citizen has a complaint about an administrative decision he or she first shall submit his / her complaint to the official's superior. But if within 30 days no reaction has followed his / her complaint, he / she either can complain to the NOC, or file his case at the Administrative Court. Whether he / she will go to the NOC or file his / her case to the Administrative Court is up to his / her own choice.

What is for sure, is that the handling of complaints by the NOC is free of charge, and usually more speedily than the judicial course, which usually will very likely be brought to the appellate High Court and the Supreme Court, if not to the Constitutional Court, involving quite a substantial amount of money and length of time, before a decision is reached.

Apart from handling cases and advising the government, the NOC has conducted at least 2 seminars per year on various important issues of the day and 3 training sessions for students, NGOs and the public, who are interested and have aspirations to become assistant ombudsmen or open an ombudsman office in the region.

At present the NOC has already provided some **preliminary training** to over 800 people all over Indonesia. But in order to really become an assistant ombudsman, one is required to have had further practical in-house and on-hand training at the NOCs office in Jakarta. Also needed is a recommendation from the NOC and certificate, that the respective applicant has enjoyed special training at and by the NOC, and is therefore eligible for appointment.

These training sessions are very important, since we envisage that in the near future around 33 Representative offices of the NOC in the provinces, and a great number of Local Ombudsman Office in the autonomous regions will have the need for specially trained lawyers and other personnel to act as Assistant Ombudsmen.

Another activity of the NOC are the so-called **clinical sessions**, following the training sessions in the autonomous regions, whereby local citizens could complain directly to the NOC sitting in the capital of the autonomous region during 3-5 days.

These clinical sessions are also attended by the trainees who showed special interest in the previously held course, and are very likely to become ombudsman or assistant ombudsman in the region.

The NOC since the beginning realized, that it would be better to also have local ombudsman offices in the regions, as well as representative offices of the NOC in the provinces, so that complainants could have direct access to their Ombudsman.

As the NOC commissioners were experienced as researchers, judges, advocates, as well as public attorneys, they felt that the office and mentality of an ombudsman, (although at specific stages of handling a case is very much alike or akin to the work and attitude of an attorney, advocate or a judge), requires quite another kind of attitude, both as to the complainant, as well as to the official or institution complained of.

As to the complainant the ombudsman is not to take an air of authority. Rather he or she should be able to be a good listener, whilst at the same time able to understand and weigh, what has actually happened. Psychology at this stage is a very important feature to be able to **build a relationship of trust** between the complainant and the (assistant) ombudsman.

After the complainant has left the office, the next stage is to evaluate the case legally, the way an advocate or judge would do. During this stage the ombudsman should place him or herself in the position of an impartial professional judge, weighing both or all interests and/or aspects involved, e.g. that of the complainant, the interest of the government, and in particular that of the respective governmental institution, and also of the public at large.

Whenever he comes to a preliminary conclusion, he may either ask for more clarifications or documents from the complainant, or from the institution complained of.

Meanwhile he / she weighs the case against the principles of good governance and examines whether there is a case of non-compliance by the authority.

After he/she obtained the necessary clarifications and/or documents, he/she will then proceed with writing the concept of the recommendation(s).

Since the recommendations are not to be decisions, the language should be carefully chosen, as not to give an order, but to **persuade** the complained of official (or his superior) to understand the gravity and seriousness of the complaint and to admit that the official's attitude or decision was contrary to the principle of good governance or justice or non-discrimination.

In this stage, the ombudsman should write as an advocate would write his plea, but at the same time point out the facts leading to malpractice, as a judge would write his legal reasoning, ending with a plea to the superior of the complained of official to (in the course of good governance) take the necessary steps as recommended by the

ombudsman, which may include the recommendation to correct the respective decision (and annul the previous one) or to take other steps, including administrative punishment against the wrong-doer, etc.

The NOC sees this procedure as a means towards self-correction of the bureaucratic machinery, thereby creating a conducive climate for a more effective and clean government, whilst protecting the rights of citizens for better public service, justice and prosperity.

Conclusion

Although 6 years of existence is not comparable to the more than 200 years of the Swedish Ombudsman, the fact still exists, despite the unwillingness of many a high ranking official, especially those with a legal background, that its very existence is in itself an achievement, thanks to the perseverance of the NOC Chairman, Mr. Antonius Sujata, supported by his 5 Commissioners.²

The Bill on the Ombudsman of the Republic of Indonesia, although already submitted to the government 6 months after the NOC's establishment, and which was decided to become a bill on Parliament's initiative, is still awaiting for its debate in Parliament, although lately it was scheduled for June 2006.

Apart from the usual reluctance of bureaucrats to have someone "looking over their shoulders", (criticizing every move or decision and uncovering structural weaknesses in the administrative system, while pointing to problem areas in procedural matters), lawyers and citizens as well as bureaucrats usually point to the fact that the Ombudsman can only make recommendations, and not decide on the matter, which is why they come to the conclusion, that the ombudsman is not effective enough, because he/she cannot make legally binding decisions and only persuade bureaucrats to take the recommended actions.

Little do the critics realize, that this very principle (that the ombudsman all over the world can only make recommendations) in fact gives it (the

ombudsman) its strength, instead of its weakness. Because, were the ombudsman to give decisions then these decisions could be the object for appeal to the court or to another institution, which would not only prolong the span of time for a "final" decision, but would destroy the possibility for the citizen to obtain a relatively easy and speedy handling of his/her complaint about the government's attitude or performance in providing the necessary services, which are the citizen's rights.

Were the Ombudsman to make decisions, therefore, this would completely destroy the effect and reason, for which the institution of the ombudsman has come into existence e.g. to prevent the citizen from having to hire an expert/lawyer, who will assist him in finding the right procedure and the right official, who has the authority to put things right.

Giving the ombudsman the duty or authority to make decisions, therefore, would only create another court or add and prolong the legal procedure towards a "final" decision, thereby in fact hampering or even eliminating the possibility and the right for the citizen to have a wrong administrative decision corrected. What is more, not only would a speedy decision be made impossible, the whole procedure would only be possible for the rich, but not for the poor.

It is therefore hoped that lawyers, politicians and the public alike will realize how important the role and function of the institute of the Ombudsman is, not only in the process of bureaucratic reform, but also in the plight towards greater protection of the rights of the citizen for better services and prosperity, including those to be provided by the courts in their search for justice.

If some 150 states all over the world have found the establishment of the institution of the Ombudsman conducive to the realization of the protection of the rights of the citizen to ensure and improve a clean and effective government for the needs of the 21st century, surely the same can be expected to also be a necessary institution for Indonesia towards good governance under the rule of law of a democratic state.

² Since 2002 another Ombudsman joined the Commission, making the NOC to have 6 Commissioners